

In the Matter Of:

Stacy L. Randall v. Reed C. Widen, et al.

Corporate Representative of Windy Waters, Inc.

November 03, 2023

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**Stacy L. Randall v.
Reed C. Widen, et al.**

**Video Deposition of Corporate Representative of Windy Waters, Inc.
November 03, 2023**

<p>UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WISCONSIN</p> <hr/> <p>STACY L. RANDALL, Plaintiff, -vs- Case No. 3:22-cv-00400-jdp REED C. WIDEN, MICHAEL KIESLER, WIDEN ENTERPRISES, LLC, and WINDY WATERS, INC., Defendants.</p> <hr/> <p>Video Deposition of MATTHEW R. GONNERING, as the Corporate Representative of Windy Waters, Inc., pursuant to Federal Rule of Civil Procedure Rule 30(b)(6), taken at the instance of the Plaintiff, before Peggy S. Christensen, RPR, CRR, a Notary Public in and for the State of Wisconsin, at O'Neil, Cannon, Hollman, DeJong & Laing S.C., 111 East Wisconsin Avenue, Suite 1400, Milwaukee, Wisconsin, on November 3, 2023, commencing at 8:56 a.m. and concluding at 5:05 p.m.</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">I N D E X</p> <p>1 Examination: Page 2 By Mr. Cameli 6 3 4 5 Exhibits Identified: Page 6 Exhibit 1 Notice of Deposition, Corporate 11 Representative, Windy Waters, Inc. 7 8 Exhibit 2 Defendants' Objections and 13 Responses to Plaintiff Stacy L. Randall's First Set 9 of Interrogatories 10 Exhibit 3 11/3/2023 Notes regarding Topic 1 19 11 Exhibit 4 11/3/2023 Notes regarding Topic 3 30 12 Exhibit 5 10/23/2023 through 11/2/2023 48 Emails between counsel, Subject: 13 Randall v Widen, et al. - Memorializing Conversation on Rule 30(b)(6) Deposition 14 15 Exhibit 6 11/3/2023 Notes regarding Topic 8 65 16 Exhibit 7 Declaration of Michael Kiesler 86 17 Exhibit 8 11/3/2023 Notes regarding Topic 9 88 18 Exhibit 9 Defendants' Proposed Findings of 92 Facts in Support of Motion for 19 Summary Judgment 20 Exhibit 10 Windy Waters, Inc. - Class B 93 Stock Register 21 22 Exhibit 11 11/3/2023 Notes regarding Topic 6 98 23 24 Exhibit 12 7/22/2004 Valuation of 99 Windy Waters, Inc., prepared by Bruce Hutler, CFA, ASA, AVA, Virchow Krause Valuation, LLC 25</p>
<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S 2 3 REINHART BOERNER VAN DEUREN S.C., by MR. MARK A. CAMELI and 4 MS. MARY MARGARET EVANS, 1000 North Water Street, Suite 1700 5 Milwaukee, Wisconsin 53202 appeared on behalf of the Plaintiff. 6 7 8 O'NEIL, CANNON, HOLLMAN, DeJONG & LAING S.C., by MR. DEAN P. LAING and MR. CHRISTA D. WITTENBERG, 9 111 East Wisconsin Avenue, Suite 1400, Milwaukee, Wisconsin 53202, 10 appeared on behalf of the Defendants. 11 12 Also present: Jon Hansen, CLVS, Videographer 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 Exhibit 13 11/3/2023 Notes regarding Topic 21 117 2 Exhibit 14 Shareholder Agreement of 133 Widen Colourgraphics, Ltd. 3 4 Exhibit 15 Second Amendment to Shareholder 137 Agreement 5 Exhibit 16 5/8/2020 Email from Matthew 165 Gonnering to Reed Widen, 6 Subject: Operational Update, May 8 7 Exhibit 17 Transcript of the 9/19/2023 Video 174 Deposition of Michael J. Kiesler 8 9 Exhibit 18 ITR Economics, EVP Flex December 180 2020 report on Widen 10 Exhibit 19 11/3/2023 Notes regarding Topic 11 186 11 Exhibit 20 11/3/2023 Notes regarding Topic 17 201 12 Exhibit 21 11/3/2023 Notes regarding Topic 7 206 13 Exhibit 22 Minutes of the 2019 Annual 210 Meeting of the Shareholders of 14 Windy Waters, Inc. 15 16 17 18 (The original exhibits were attached to the original transcript and PDFs were provided to counsel) 19 20 21 22 23 24 (The original transcript was filed with Attorney Jessica Hutson Polakowski) 25</p>

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<p style="text-align: right;">Page 5</p> <p>1 THE VIDEOGRAPHER: Good morning. 2 We are now on the record. My name is 3 Jon Hansen, CLVS. I'm the videographer today 4 with For the Record, Madison, Wisconsin. 5 Today's date is November 3, 2023. The 6 time is 8:56. 7 This video deposition is being held in 8 the matter of Stacy L. Randall vs. Reed C. 9 Widen, et al., Case No. 22-cv-400-jdp. The 10 deponent this morning is the corporate 11 representative of Windy Waters. 12 The court reporter today is Peggy 13 Christensen, also from For the Record. At 14 this time if the court reporter could swear 15 the witness after the introductions of 16 counsel. 17 MR. CAMELI: Good morning. On 18 behalf of the plaintiff, Mark Cameli and 19 Mary Margaret Evans of the Reinhart Boerner 20 Van Deuren firm. 21 MS. WITTENBERG: Good morning. 22 Christa Wittenberg and Dean Laing of O'Neil, 23 Cannon, Hollman, DeJong & Laing for the 24 defendants. 25</p>	<p style="text-align: right;">Page 7</p> <p>1 A Correct. 2 Q These have been covered with you previously, but 3 I'll just rattle through them just by way of 4 making sure that this goes as smoothly as possible. 5 I don't want us to talk over each other, and 6 so it's most helpful if you can also respond 7 verbally using words, not a nod or shake of your 8 head. 9 So if you don't understand something that I'm 10 asking, just say so. Do you understand that? 11 A I do. 12 Q Okay. If you do answer, I'll assume you 13 understood my question, and if you need to take a 14 break at any time, just let me know, and we can do 15 that. Okay? 16 A Okay. 17 Q All right. If you realize later that you forgot 18 something to include in some earlier response, 19 just let us know, and we'll see about correcting 20 that. Okay? 21 A Okay. 22 Q And you're going to have an opportunity to read 23 your transcript that's being taken today and make 24 transcription corrections. Do you understand that? 25 A I do.</p>
<p style="text-align: right;">Page 6</p> <p>1 MATTHEW R. GONNERING, called as a 2 witness, being first duly sworn, testified on 3 oath as follows: 4 5 EXAMINATION 6 BY MR. CAMELI: 7 Q Will you please state your full name for the record. 8 A Matthew Richard Gonnering. 9 Q Good morning, Mr. Gonnering. My name is Mark 10 Cameli. I think we've met before. I represent 11 the plaintiff in this case. 12 And I understand you're here today because 13 Windy Waters has designated you to testify on 14 behalf of Windy Waters about one or more topics; 15 is that correct? 16 A Correct. 17 Q And I know you've been deposed before in this 18 case. But other than this case, remind me, how 19 many other times have you been deposed? 20 A Zero. 21 Q And have you ever been designated as a witness to 22 testify on behalf of an organization such as a 23 corporation or LLC? 24 A I have not. 25 Q Okay. So this is the first for you in that regard?</p>	<p style="text-align: right;">Page 8</p> <p>1 Q And you understand, of course, that you're under 2 oath today? 3 A I do. My microphone just fell off. 4 Q That's okay. 5 A Good? 6 Q And this is similar, then, in that regard to 7 testifying in court under oath. You understand 8 that? 9 A I do. 10 Q Is there anything that's going to prevent you from 11 providing me with complete and honest testimony 12 here today? 13 A There is not. 14 Q You don't have any -- I apologize if this is 15 intruding on you personally. You're not on any 16 medications or have any conditions that impact 17 your ability to answer my questions completely and 18 honestly? 19 A No. 20 Q Nor to understand them? 21 A No. 22 Q Good. So you prepared for today's deposition, 23 I presume; right? 24 A I did. 25 Q And did you review documents?</p>

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<p>1 A I did.</p> <p>2 Q And can you give me -- we're going to get into</p> <p>3 this in greater depth later, but can you give me</p> <p>4 kind of an overview of the type of things that you</p> <p>5 were looking at with respect to this testimony</p> <p>6 preparation?</p> <p>7 A Uh-huh. I looked at depositions, previous</p> <p>8 depositions, the transcripts of those depositions.</p> <p>9 I looked at some financial statements. I looked</p> <p>10 at emails. I looked at corporate records related</p> <p>11 to stock and distributions.</p> <p>12 I met with counsel, with Christa, with Dean,</p> <p>13 with Mark. In that same several meetings, we also</p> <p>14 had Reed and Mike, and I spoke with them as well.</p> <p>15 Q Do you know whether any of the documents that you</p> <p>16 reviewed, whether any of them were not produced to</p> <p>17 us in the course of discovery to date?</p> <p>18 A I am not aware of that.</p> <p>19 Q Okay. And did you review any notes that you had</p> <p>20 taken or others had taken in anticipation of this</p> <p>21 testimony today?</p> <p>22 A We did assemble notes for this testimony by topic</p> <p>23 and prepared those notes by reviewing the</p> <p>24 documents and in conversations with counsel.</p> <p>25 Q Okay. And do you have those notes with you today?</p>	<p>1 reviewed in anticipation of today. It was</p> <p>2 prepared as notes, as sort of a collective</p> <p>3 work product while we were preparing and one</p> <p>4 way to cohesively combine those thoughts was</p> <p>5 to put it on the paper.</p> <p>6 So it's not that it was something that</p> <p>7 existed before the prep began. So I</p> <p>8 understand your position --</p> <p>9 MR. CAMELI: Yeah.</p> <p>10 MS. WITTENBERG: -- and you</p> <p>11 understand mine.</p> <p>12 MR. CAMELI: And I understand yours.</p> <p>13 MS. WITTENBERG: Yes.</p> <p>14 MR. CAMELI: Very good.</p> <p>15 BY MR. CAMELI:</p> <p>16 Q So I think you identified everyone that you had</p> <p>17 spoken with in preparation of your testimony</p> <p>18 today; is that right?</p> <p>19 A I did.</p> <p>20 Q So what I would like to do now is show you what's</p> <p>21 been marked as Exhibit 1.</p> <p>22 (Exhibit No. 1 marked for</p> <p>23 identification)</p> <p>24 Q And Exhibit 1 is a Notice of Deposition of</p> <p>25 Windy Waters pursuant to Rule 30(b) (6) of the</p>
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<p>1 A We have some notes, yes.</p> <p>2 MR. CAMELI: Okay. So I would like</p> <p>3 those produced as part of this testimony.</p> <p>4 Can we have that done?</p> <p>5 MS. WITTENBERG: Well, the way it's</p> <p>6 set up is if he needs notes, we have them</p> <p>7 available and then at that time if we do --</p> <p>8 if he needs them, then, yes, of course, we</p> <p>9 would be happy to do that.</p> <p>10 MR. CAMELI: But I believe that I</p> <p>11 would be entitled to anything that he</p> <p>12 reviewed in anticipation of his testimony</p> <p>13 today.</p> <p>14 MS. WITTENBERG: Until it's used to</p> <p>15 refresh recollection, it's just work product</p> <p>16 material that we created.</p> <p>17 MR. CAMELI: So our position is</p> <p>18 that if it was reviewed to prepare for</p> <p>19 testimony, that it should be produced, and if</p> <p>20 your position is different, that's okay, and</p> <p>21 I'll respect that. Is that --</p> <p>22 MS. WITTENBERG: Yes.</p> <p>23 MR. CAMELI: And is it?</p> <p>24 MS. WITTENBERG: And to be clear,</p> <p>25 and I don't mean to misstate this, it was not</p>	<p>1 Federal Rules of Civil Procedure. Do you</p> <p>2 recognize that document?</p> <p>3 A By looking at the first page of the document,</p> <p>4 I see that, yes.</p> <p>5 Q Okay. And I want to take you now to noticed topic</p> <p>6 number 1. Do you see that? It's on page 2.</p> <p>7 A Page 2. Number 1. I see it.</p> <p>8 Q All right. And I believe that says that one of</p> <p>9 the topics is Windy Waters' efforts to respond to</p> <p>10 discovery requests, including Windy Waters'</p> <p>11 document management systems and steps taken to</p> <p>12 locate and produce responsive documents, but</p> <p>13 excluding any attorney-client or work product</p> <p>14 privileged information. Did I read that</p> <p>15 correctly?</p> <p>16 A You did.</p> <p>17 Q And you prepared to testify on that topic?</p> <p>18 A I did.</p> <p>19 Q And what documents specifically did you review to</p> <p>20 prepare for that topic?</p> <p>21 A For this topic, I reviewed documents that were how</p> <p>22 information was asked from counsel over time and</p> <p>23 the parties that were involved in gathering that</p> <p>24 information.</p> <p>25 Q Okay. Great. So we're going to now share with</p>

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<p>1 you what will be marked as Exhibit 2.</p> <p>2 MR. CAMELI: You should take this</p> <p>3 one.</p> <p>4 MS. WITTENBERG: Will he need this</p> <p>5 more?</p> <p>6 MR. CAMELI: Yes. We'll be</p> <p>7 referencing that.</p> <p>8 MS. WITTENBERG: I assumed as much.</p> <p>9 (Exhibit No. 2 marked for</p> <p>10 identification)</p> <p>11 Q So I'm showing you now what's been marked as</p> <p>12 Exhibit 2, and do you recognize that document?</p> <p>13 A I recognize it marked as Exhibit 2.</p> <p>14 Q And the first page says Defendants' Objections and</p> <p>15 Responses to Plaintiff Stacy L. Randall's First</p> <p>16 Set of Interrogatories. Do you see that?</p> <p>17 A I do see that.</p> <p>18 Q Okay. And would this have been a document that</p> <p>19 you reviewed in anticipation of your testimony</p> <p>20 here today?</p> <p>21 A I would have reviewed it by skimming it.</p> <p>22 Q Okay. Who at Windy Waters was involved in</p> <p>23 responding to these requests?</p> <p>24 A The responses to these requests would have been</p> <p>25 prepared by counsel and involved conversations</p>	<p>1 answering these interrogatories?</p> <p>2 A Yes.</p> <p>3 Q Okay. Would your answer be the same with respect</p> <p>4 to who was involved in locating responsive</p> <p>5 documents to this?</p> <p>6 A So people who were not counsel, yes, it would be</p> <p>7 Reed and Mike and me. Yes. We would have</p> <p>8 retrieved documents on request of counsel.</p> <p>9 Q Did you employ the services of a computer forensic</p> <p>10 person to assist you in searching any electronic</p> <p>11 media?</p> <p>12 A Through counsel, counsel would pull in third</p> <p>13 parties to gather certain data requests, yes.</p> <p>14 Q Okay. And do you know who those third parties</p> <p>15 were?</p> <p>16 A There was a consulting firm with Holland & Knight</p> <p>17 that they chose, which was called FTI Consulting,</p> <p>18 and there was another consulting firm or a firm</p> <p>19 that Holland & Knight chose, which was called</p> <p>20 CohnReznick. So those were two third-party data</p> <p>21 collection providers.</p> <p>22 Q Great. Now, I want to talk about what was</p> <p>23 actually searched. Why don't you tell me what you</p> <p>24 understand in terms of devices that were searched</p> <p>25 in order to respond to these requests.</p>
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<p>1 with Reed and Mike and me.</p> <p>2 Q Was there anyone else involved in terms of being</p> <p>3 consulted for the responses, other than those that</p> <p>4 you've just identified?</p> <p>5 A There is specific items in here perhaps that may</p> <p>6 have involved others. I do not know that by just</p> <p>7 casual observation here. But those were the main</p> <p>8 people. Additional people at Holland & Knight</p> <p>9 were also involved.</p> <p>10 Q And I guess I'm more interested in knowing who at</p> <p>11 Windy Waters would have been involved.</p> <p>12 A Understood. So just those three, then. Reed,</p> <p>13 Mike, and me.</p> <p>14 Q Okay. And for Widen Enterprises, as well, did</p> <p>15 anyone from there assist?</p> <p>16 MS. WITTENBERG: I'm going to</p> <p>17 object to that as being outside of the scope</p> <p>18 of the topic for the Windy Waters deposition</p> <p>19 today.</p> <p>20 MR. CAMELI: Sure. Thank you.</p> <p>21 Q You may answer that, if you know.</p> <p>22 A My affiliation with Widen Enterprises.</p> <p>23 Q Okay. Were the same people -- was it the same</p> <p>24 people that you just identified for Windy Waters</p> <p>25 that would have been involved, as well, in</p>	<p>1 A There was a device that would be Mike's laptop</p> <p>2 that was searched. There were mobile devices.</p> <p>3 Q You're referring to Mr. Kiesler?</p> <p>4 A Correct.</p> <p>5 Q Okay.</p> <p>6 A There were mobile devices, Reed's, Mike Kiesler's,</p> <p>7 and Matthew Gonnering's, mine, that were searched.</p> <p>8 Q And what do you call a mobile device more</p> <p>9 specifically? Phones? Tablets? Notebooks?</p> <p>10 A A phone. A phone.</p> <p>11 Q Phones?</p> <p>12 A Yep. Phones were searched, yes.</p> <p>13 Q Okay. Go on.</p> <p>14 A There was a Google Drive that was searched, which</p> <p>15 is a place where documents would be stored.</p> <p>16 Q Uh-huh.</p> <p>17 A There was an account in a system called Box that</p> <p>18 was also searched. So that's the laptop, those</p> <p>19 were the phones, the Google Drive, and Box. There</p> <p>20 were also Slack messages that were searched.</p> <p>21 There were emails that were searched as well.</p> <p>22 Q And Slack messages, any other form of a text</p> <p>23 message related content?</p> <p>24 A Text messages would have been searched as part of</p> <p>25 the phone, yes.</p>

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<p>1 Q Any servers belonging to Windy Waters searched at</p> <p>2 all?</p> <p>3 A There were no -- the servers would have been.</p> <p>4 Google Drive would have been. You may consider</p> <p>5 that a server. There were no other servers.</p> <p>6 Q I understand. And was there anything related to</p> <p>7 Widen Enterprises that was searched in connection</p> <p>8 with these responses?</p> <p>9 A Anything related to, that would have been the</p> <p>10 emails, the Widen.com emails for Reed and Mike and</p> <p>11 me, and Widen information would have been part of</p> <p>12 the other -- would have been part of the laptop,</p> <p>13 would have been part of the Slack messages.</p> <p>14 Q Oh, what about paper files?</p> <p>15 A Yes. Mike did provide paper files to counsel on</p> <p>16 request as well.</p> <p>17 Q Are you aware of whether there were any specific</p> <p>18 responsive documents that were withheld based on</p> <p>19 claims of privilege or any other objection?</p> <p>20 A I'm aware that all responsive documents have been</p> <p>21 provided and continue to be provided.</p> <p>22 Q Okay. So just to be clear, my question is whether</p> <p>23 any were withheld that you're aware of, really for</p> <p>24 any reason.</p> <p>25 A I'm not aware of any.</p>	<p>1 litigation, Mike's text messages from the year</p> <p>2 prior to the September 20 of 2021 litigation hold</p> <p>3 had auto deleted. That auto deletion setting was</p> <p>4 disabled when the litigation hold was provided.</p> <p>5 Q Okay. So let me mark, then, the document that was</p> <p>6 just provided to me and that you are reviewing,</p> <p>7 and we'll mark this --</p> <p>8 MS. WITTENBERG: We'll mark this</p> <p>9 one?</p> <p>10 MR. CAMELI: Yeah. That would be</p> <p>11 great.</p> <p>12 (Exhibit No. 3 marked for</p> <p>13 identification)</p> <p>14 Q That's Exhibit 3; is that right?</p> <p>15 A Yes, it is.</p> <p>16 Q And these are notes that were prepared and</p> <p>17 reviewed by you that pertain to topic 1; is that</p> <p>18 correct?</p> <p>19 A That's correct.</p> <p>20 Q All right. I just want to talk about this</p> <p>21 deleting function on Mr. Kiesler's phone. Was</p> <p>22 that ever disabled at any point?</p> <p>23 A It was disabled when the litigation hold was</p> <p>24 received.</p> <p>25 Q And so presumably, then, all emails from a year</p>
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<p>1 MS. WITTENBERG: And just for the</p> <p>2 record, Mark, we did produce a privilege log,</p> <p>3 so I don't know if he's necessarily familiar</p> <p>4 with that.</p> <p>5 MR. CAMELI: Privy to that.</p> <p>6 MS. WITTENBERG: Yeah. He may not</p> <p>7 have known that himself.</p> <p>8 MR. CAMELI: So those would have</p> <p>9 been accounted for on the privilege log?</p> <p>10 MS. WITTENBERG: Right.</p> <p>11 MR. CAMELI: Okay. Perfect.</p> <p>12 BY MR. CAMELI:</p> <p>13 Q Are you aware of any responsive documents that</p> <p>14 were not produced because they may have been</p> <p>15 destroyed in the ordinary course of business?</p> <p>16 A I'm aware of a setting on Mike Kiesler's phone</p> <p>17 that was deleting text messages that were older</p> <p>18 than a certain time period.</p> <p>19 MS. WITTENBERG: I didn't want to</p> <p>20 interrupt your flow, but since he is looking</p> <p>21 at it now, these are some notes that were put</p> <p>22 in front of him about some of these issues,</p> <p>23 and there is a copy for you.</p> <p>24 MR. CAMELI: Okay.</p> <p>25 A Yeah. Due to the settings prior to the</p>	<p>1 before that and forward -- excuse me, messages</p> <p>2 from a year before that and forward would still be</p> <p>3 preserved; is that correct?</p> <p>4 A Presumably, yes.</p> <p>5 Q All right. So the other -- two days ago we</p> <p>6 received some additional documents, and yesterday</p> <p>7 we received -- last night we received some</p> <p>8 additional documents. Do you understand why that</p> <p>9 happened and how that happened?</p> <p>10 A I understand that we did -- we provided emails</p> <p>11 early based on the search terms, and there may</p> <p>12 have been some export complexity related to Mike</p> <p>13 Kiesler's email that was requiring us to go back</p> <p>14 and redo that because there were things that were</p> <p>15 not appearing in the first export. And so counsel</p> <p>16 worked with the IT department at Acquia to go back</p> <p>17 and gather all of those emails again.</p> <p>18 Q When was that anomaly discovered?</p> <p>19 A I am not prepared to provide an exact date for</p> <p>20 that. I would say --</p> <p>21 Q Approximate --</p> <p>22 A -- recently.</p> <p>23 Q -- would be okay. Recently?</p> <p>24 A Recently.</p> <p>25 Q So in the last -- would it have been less than</p>

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<p>1 30 days?</p> <p>2 A I'm not prepared to provide that. So --</p> <p>3 Q Okay. Were there any other reasons that documents</p> <p>4 were recently produced to us, meaning last evening</p> <p>5 and two days ago?</p> <p>6 A Any other reason that they would have been</p> <p>7 produced recently would have been because they</p> <p>8 were responsive documents, so that then the</p> <p>9 realization that they may not have been produced</p> <p>10 prior.</p> <p>11 Q Yeah. And I appreciate that. I'm asking, though,</p> <p>12 about whether there were any other reasons why</p> <p>13 they weren't produced earlier. You mentioned an</p> <p>14 anomaly in the search of Mr. Kiesler's data.</p> <p>15 A Yeah.</p> <p>16 Q Was there any other glitches or other reasons why</p> <p>17 they weren't produced earlier?</p> <p>18 A Not that I'm aware of.</p> <p>19 Q So all of this is a reflection of the explanation</p> <p>20 you've just provided concerning Mr. Kiesler's</p> <p>21 data?</p> <p>22 A Correct.</p> <p>23 Q Okay.</p> <p>24 A We also went and retrieved Mr. Widen's data at the</p> <p>25 same time to verify that that was also done.</p>	<p>1 ago.</p> <p>2 MS. WITTENBERG: And two days ago.</p> <p>3 Understood. We may oppose it, we may not,</p> <p>4 but thank you for stating that on the record.</p> <p>5 BY MR. CAMELI:</p> <p>6 Q Okay. Let's move to topic 2. And why don't you</p> <p>7 reference the Notice of Deposition, Exhibit 1,</p> <p>8 that I gave you previously, and the bottom of</p> <p>9 page 2 says that we are going to be talking with</p> <p>10 you today about Windy Waters' document retention</p> <p>11 policies that were effective during, or</p> <p>12 implemented between, 2015 to the present. Did I</p> <p>13 read that correctly?</p> <p>14 A You did.</p> <p>15 Q And did you prepare to testify with respect to</p> <p>16 topic number 2?</p> <p>17 A I did.</p> <p>18 Q And what documents did you review to prepare for</p> <p>19 testifying on behalf of Windy Waters with respect</p> <p>20 to this topic?</p> <p>21 A I reviewed the document retention policy that</p> <p>22 Windy Waters adopted.</p> <p>23 Q Do you know if that policy was produced?</p> <p>24 A I believe that it was.</p> <p>25 Q Do you know when that policy was implemented?</p>
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<p>1 So --</p> <p>2 Q And what was the result of that retrieval?</p> <p>3 A That it was all there initially.</p> <p>4 Q So everything that was responsive was provided?</p> <p>5 A Yes.</p> <p>6 Q Is that your testimony?</p> <p>7 A Yes.</p> <p>8 MR. CAMELI: Okay. So I think it</p> <p>9 makes sense for us to state on the record</p> <p>10 here that memorializes the correspondence</p> <p>11 from last evening, that we're reserving our</p> <p>12 right to continue this deposition to explore</p> <p>13 topics related to these recent productions.</p> <p>14 I understand that counsel for the</p> <p>15 defense has said that they may object to</p> <p>16 that, and if there is anything further on the</p> <p>17 record you wish to state, feel free to do so.</p> <p>18 MS. WITTENBERG: Sure. Thank you.</p> <p>19 And to be clear on what you are stating is</p> <p>20 that you're reserving the right to, as we</p> <p>21 understand it, continue a portion of the</p> <p>22 deposition to explore specifically the</p> <p>23 documents that were produced yesterday</p> <p>24 evening. Is that the understanding?</p> <p>25 MR. CAMELI: Yesterday and two days</p>	<p>1 A It was in effect for the time period requested,</p> <p>2 which was 2015 to present.</p> <p>3 Q Was it ever suspended?</p> <p>4 A No.</p> <p>5 Q So upon receiving the litigation hold in this</p> <p>6 case, was anything changed with respect to the</p> <p>7 document retention policy you just referenced?</p> <p>8 A Upon receiving the litigation hold was anything</p> <p>9 changed with respect to that document retention?</p> <p>10 No.</p> <p>11 Q Do you know if that referred at all to the</p> <p>12 deletion of data after a prescribed period of time?</p> <p>13 A There were references in that policy related to</p> <p>14 deleting certain records after a certain period of</p> <p>15 time, yes.</p> <p>16 Q And did I understand you to say that that did</p> <p>17 not -- that was not suspended after the litigation</p> <p>18 hold was provided?</p> <p>19 A Correct.</p> <p>20 Q So after the litigation hold was provided,</p> <p>21 Windy Waters continued to delete data that met</p> <p>22 the criteria of the policy?</p> <p>23 A Yes.</p> <p>24 Q Okay.</p> <p>25 A Well, wait a minute. Let me pause there. After</p>

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<p style="text-align: right;">Page 25</p> <p>1 the litigation hold, we would have not deleted</p> <p>2 information that was related to the litigation</p> <p>3 hold, and in that respect it would have -- it may</p> <p>4 have suspended some of those.</p> <p>5 Q Because the litigation hold was very broad, and so</p> <p>6 I would be interested in knowing what documents</p> <p>7 you didn't suspend from the litigation hold.</p> <p>8 A Yeah. Which is why I was incorrect in that. So</p> <p>9 the document -- the retention policy would have</p> <p>10 been suspended when receiving the litigation hold</p> <p>11 to comply with the litigation hold.</p> <p>12 Q All right. So that I'm clear -- and I appreciate</p> <p>13 you correcting that -- was there anything that was</p> <p>14 excepted from, in other words, that you didn't</p> <p>15 suspend, the document retention policy for?</p> <p>16 A Can you repeat that?</p> <p>17 Q Sure. I'll try to rephrase it to make it even</p> <p>18 clearer.</p> <p>19 A Yeah.</p> <p>20 Q Was there any sort of documents that you continued</p> <p>21 to destroy, any sort, any sort of documents that</p> <p>22 were part of Windy Waters that you continued to</p> <p>23 destroy consistent with the document retention</p> <p>24 policy after the litigation hold was received?</p> <p>25 A Not that I'm aware of.</p>	<p style="text-align: right;">Page 27</p> <p>1 prepare for testifying about that topic?</p> <p>2 A I reviewed corporate records of Windy Waters.</p> <p>3 Q Anything else?</p> <p>4 A Not that comes to mind at the moment.</p> <p>5 Q Do you think you would have looked at</p> <p>6 correspondence at all related to this topic?</p> <p>7 A I may have.</p> <p>8 Q Let's look at topic 8. And that refers to the</p> <p>9 election of officers and directors from 2004</p> <p>10 through 2020. Did I read that correctly?</p> <p>11 A You did.</p> <p>12 Q And you prepared your testimony to that topic as</p> <p>13 well?</p> <p>14 A Yes.</p> <p>15 Q And what documents did you review to prepare for</p> <p>16 testifying on behalf of Windy Waters about this</p> <p>17 topic?</p> <p>18 A The corporate records of Windy Waters.</p> <p>19 Q Anything else?</p> <p>20 A Not that I recall at this moment.</p> <p>21 Q Did you speak with anyone in connection with</p> <p>22 preparing for your deposition on topics 3 and 8</p> <p>23 other than your counsel?</p> <p>24 A I spoke with Reed and Mike and counsel collectively.</p> <p>25 Q Everyone was in the same room?</p>
<p style="text-align: right;">Page 26</p> <p>1 Q How was the litigation hold itself transmitted to</p> <p>2 employees, directors, officers, or anyone</p> <p>3 affiliated with Windy Waters?</p> <p>4 A It was received by counsel and provided to</p> <p>5 Windy Waters' affiliates at that time, Windy Waters.</p> <p>6 Q Okay. Do you know if anyone wasn't provided the</p> <p>7 document hold, the litigation hold?</p> <p>8 A I'm aware that everyone with Windy Waters'</p> <p>9 affiliation was provided the document, the</p> <p>10 litigation hold.</p> <p>11 Q Thank you. All right. Let's move to topic -- I</p> <p>12 want to combine topics 3 and 8 for a moment. And,</p> <p>13 again, reference your Notice of Deposition,</p> <p>14 Exhibit 1, and noticed topic 3 reads, "The</p> <p>15 organization, management, and governance of</p> <p>16 Windy Waters, including, without limitation, the</p> <p>17 involvement of each of Stacy Randall, Reed Widen,</p> <p>18 Matthew Gonnering, and Michael Kiesler in the</p> <p>19 management and/or governance of Windy Waters."</p> <p>20 Did I read that correctly?</p> <p>21 A You did.</p> <p>22 Q And you prepared testimony -- for your testimony</p> <p>23 today on that topic?</p> <p>24 A I did.</p> <p>25 Q And what documents specifically did you review to</p>	<p style="text-align: right;">Page 28</p> <p>1 A Yes.</p> <p>2 Q Okay.</p> <p>3 A Or phone calls, multiple.</p> <p>4 Q And those conversations, again, were with legal</p> <p>5 counsel present?</p> <p>6 A That's correct.</p> <p>7 Q All right. Tell me, what is Windy Waters as an</p> <p>8 entity? How would you describe it?</p> <p>9 A I would describe Windy Waters as a holding company.</p> <p>10 Q For what?</p> <p>11 A For assets.</p> <p>12 Q And what assets?</p> <p>13 A Windy Waters was a holding company for an asset</p> <p>14 that was referred to as Widen Enterprises, which</p> <p>15 is an operating entity, and also for another asset</p> <p>16 that was investments.</p> <p>17 Q And could you be a little more specific about what</p> <p>18 you mean by an asset that was for investments?</p> <p>19 A Marketable securities that Windy Waters managed.</p> <p>20 Q How did those marketable securities get into</p> <p>21 Windy Waters' control or oversight?</p> <p>22 A They would be at times provided from the operating</p> <p>23 entity, Widen Enterprises.</p> <p>24 Q Were they provided from any other source other</p> <p>25 than Widen Enterprises?</p>

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<p>1 A Not to my knowledge.</p> <p>2 Q Was there any other assets that were held by</p> <p>3 Windy Waters?</p> <p>4 A Other than Widen Enterprises and marketable</p> <p>5 securities?</p> <p>6 Q Yes, sir.</p> <p>7 A Not to my knowledge.</p> <p>8 Q All right. Are you familiar with a Widen UK?</p> <p>9 A I am.</p> <p>10 Q Was that part of Windy Waters? Was that held by</p> <p>11 Windy Waters?</p> <p>12 A That was part of Widen Enterprises. So I would</p> <p>13 not deem that part of Windy Waters since it was</p> <p>14 held by Widen Enterprises.</p> <p>15 Q Okay. And as such, because Widen Enterprises was</p> <p>16 held by Windy Waters, it would be held by them via</p> <p>17 that relationship; is that correct?</p> <p>18 A That would be correct.</p> <p>19 Q When was Windy Waters formed?</p> <p>20 MS. WITTENBERG: I have a copy here</p> <p>21 too, Mark.</p> <p>22 MR. CAMELI: Thank you.</p> <p>23 MS. WITTENBERG: Do you want to</p> <p>24 have the court reporter --</p> <p>25 MR. CAMELI: Yeah. Let's just have</p>	<p>1 Q And who are those shareholders that own</p> <p>2 Windy Waters?</p> <p>3 A I believe that is another topic that we also</p> <p>4 prepared.</p> <p>5 Q Okay. Would you need to look at anything in order</p> <p>6 to answer that question?</p> <p>7 A I would like to look at the stock register to make</p> <p>8 sure that I am providing accurate information.</p> <p>9 Q Okay. Well, we'll come back to that later, then.</p> <p>10 Without regard for percentages owned by</p> <p>11 particular shareholders, do you know who those</p> <p>12 people are, who those entities are off the top of</p> <p>13 your head, or do you prefer that we wait to look</p> <p>14 at that?</p> <p>15 A I would prefer to wait to look at the register.</p> <p>16 Q Okay. Were the shareholders members of the Widen</p> <p>17 family or key employees of Widen Enterprises?</p> <p>18 A Yes.</p> <p>19 Q Were they both?</p> <p>20 A At various times, it was only the Widen family,</p> <p>21 and then key employees were introduced at a later</p> <p>22 point.</p> <p>23 Q Key employees of Widen Enterprises?</p> <p>24 A Correct.</p> <p>25 Q Were you ever an officer or director of</p>
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<p>1 it marked. Yeah. That's a good idea. We're</p> <p>2 at 4?</p> <p>3 COURT REPORTER: Yes.</p> <p>4 (Exhibit No. 4 marked for</p> <p>5 identification)</p> <p>6 Q So your counsel has given you a document</p> <p>7 identified as Exhibit 4. Do you have that in</p> <p>8 front of you?</p> <p>9 A I do.</p> <p>10 Q And does this purport to be notes regarding topic</p> <p>11 number 3?</p> <p>12 A It is.</p> <p>13 Q And are these notes that you prepared to assist</p> <p>14 you with your testimony here today?</p> <p>15 A These notes were prepared collectively with</p> <p>16 counsel in preparation for today.</p> <p>17 Q All right. And did you also involve any other</p> <p>18 parties other than your counsel in preparing these</p> <p>19 notes?</p> <p>20 A Reed and Mike.</p> <p>21 Q Okay. So who owns Windy Waters?</p> <p>22 A The shareholders.</p> <p>23 Q I'm not sure if you answered, when was</p> <p>24 Windy Waters formed?</p> <p>25 A 1997.</p>	<p>1 Windy Waters?</p> <p>2 A I was not.</p> <p>3 Q And despite that, though, you are the appointed</p> <p>4 representative of Windy Waters as their corporate</p> <p>5 representative for today's testimony?</p> <p>6 A That is correct.</p> <p>7 Q Why do you think that is? Why are you the</p> <p>8 appointed representative?</p> <p>9 MS. WITTENBERG: Objection. Vague.</p> <p>10 Calls for privileged information. I'm going</p> <p>11 to instruct you not to answer anything that</p> <p>12 would have been a communication between us</p> <p>13 about why you're here today.</p> <p>14 Q So let me rephrase that question. Are you here</p> <p>15 today because of your role as CEO of Widen</p> <p>16 Enterprises?</p> <p>17 MS. WITTENBERG: Same objections</p> <p>18 and same instruction.</p> <p>19 MR. CAMELI: All right. So you are</p> <p>20 instructing the witness not to answer that</p> <p>21 question?</p> <p>22 MS. WITTENBERG: I'm instructing</p> <p>23 him not to answer anything that would be a</p> <p>24 communication between counsel and our client</p> <p>25 with respect to why he was chosen as the</p>

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<p>1 designee.</p> <p>2 MR. CAMELI: Got it.</p> <p>3 Q All right. So respecting counsel's wishes here,</p> <p>4 can you answer the question of whether you are</p> <p>5 here as a designee for Windy Waters because of</p> <p>6 your role as CEO of Widen Enterprises?</p> <p>7 MS. WITTENBERG: You can answer to</p> <p>8 the extent that you know anything outside of</p> <p>9 what we told you in communications.</p> <p>10 A I'm here today because counsel asked me to be</p> <p>11 here.</p> <p>12 Q All right. Let's go to the next -- we're going to</p> <p>13 stay on the same topic, but where were</p> <p>14 Windy Waters' offices between 2004 and 2020?</p> <p>15 A Windy Waters' offices between 2004 and 2020 were</p> <p>16 located at 6911 Mangrove Lane in Monona, Wisconsin.</p> <p>17 Q Those were shared offices with Widen Enterprises;</p> <p>18 isn't that correct?</p> <p>19 A That is correct.</p> <p>20 Q Widen Enterprises rented that office space from</p> <p>21 Millmont; is that correct?</p> <p>22 A That is correct.</p> <p>23 Q Did Windy Waters pay rent for its use of those</p> <p>24 offices to Millmont?</p> <p>25 A I did not expect that question here, and I do not</p>	<p>1 and governance of Windy Waters.</p> <p>2 So I want to re-ask it, and if counsel</p> <p>3 wishes to instruct the witness not to answer,</p> <p>4 then that's what we'll do. I will abide by</p> <p>5 that.</p> <p>6 Q So did Windy Waters pay for its own computers?</p> <p>7 MS. WITTENBERG: I will assert the</p> <p>8 same objection. I'm willing to give a little</p> <p>9 bit of flexibility here and just preserve</p> <p>10 that objection for later. Our position is it</p> <p>11 would be his personal testimony if he knows</p> <p>12 personally.</p> <p>13 MR. CAMELI: Okay.</p> <p>14 Q You may answer if you can.</p> <p>15 A I don't know personally.</p> <p>16 Q Okay. Do you know in your capacity as a</p> <p>17 representative of Windy Waters whether it paid for</p> <p>18 its own computers?</p> <p>19 A I do not.</p> <p>20 Q What about with respect to payment for staff,</p> <p>21 cleaning, and maintenance?</p> <p>22 MS. WITTENBERG: Objection.</p> <p>23 Compound.</p> <p>24 Q Sure. Did Windy Waters pay for its staff?</p> <p>25 A I'm thinking of staff and wondering what staff</p>
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<p>1 have that.</p> <p>2 Q That's fine. Did Windy Waters pay rent for its</p> <p>3 use of those offices to Widen Enterprises?</p> <p>4 A Same response.</p> <p>5 Q You don't know the answer to that?</p> <p>6 A I didn't prepare for that, not expecting that line</p> <p>7 of questioning.</p> <p>8 Q Did Windy Waters pay for its office supplies?</p> <p>9 A I did not anticipate this question related to the</p> <p>10 topic.</p> <p>11 Q Okay. So do you not know the answer?</p> <p>12 A I do not.</p> <p>13 Q Did they pay for their own computers?</p> <p>14 MS. WITTENBERG: I'm going to</p> <p>15 object here. I know the witness has</p> <p>16 expressed this already, but this seems to be</p> <p>17 getting outside of the scope of the topic,</p> <p>18 and so I'm going to object that this is</p> <p>19 beyond the scope and any testimony that he</p> <p>20 would give would be individual and not the</p> <p>21 company's testimony.</p> <p>22 MR. CAMELI: So your objection is</p> <p>23 noted. I do believe that it is within the</p> <p>24 scope of the topic because these are relevant</p> <p>25 inquiries as to the organization, management,</p>	<p>1 we're referring to.</p> <p>2 Q Employees. Anyone --</p> <p>3 A Windy Waters had -- go ahead. Sorry.</p> <p>4 Q Go ahead. Did they not have staff? Maybe we</p> <p>5 should start with that. Did it not have any</p> <p>6 employees?</p> <p>7 A There were officers of Windy Waters, and can you</p> <p>8 go back to your question then with respect to --</p> <p>9 Q Sure. Did Windy Waters pay for any of its staff?</p> <p>10 And I want you to think of staff broadly.</p> <p>11 A Windy Waters paid directors' fees to officers.</p> <p>12 Q Okay. Did it pay for the cleaning of its office</p> <p>13 spaces?</p> <p>14 MS. WITTENBERG: I'm going to</p> <p>15 object on the same basis as before. Just to</p> <p>16 this line of questioning on specific expense</p> <p>17 items, I'll object again, and we'll have</p> <p>18 this -- you can answer if you can, if</p> <p>19 you know personally.</p> <p>20 A I do not know personally.</p> <p>21 Q And, finally, did it pay for the maintenance</p> <p>22 required of its rented space, it meaning</p> <p>23 Windy Waters?</p> <p>24 A Again, personally, I do not know that.</p> <p>25 Q Do you know in your capacity as a representative</p>

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<p>1 of Windy Waters whether that's the case?</p> <p>2 A I did not expect this line of questioning, so I</p> <p>3 did not prepare for that.</p> <p>4 Q Do you know, were there any staff or anyone other</p> <p>5 than the directors' fees that you mentioned</p> <p>6 earlier that was paid at all by Windy Waters?</p> <p>7 A I do not.</p> <p>8 Q How many employees did Windy Waters have?</p> <p>9 A Windy Waters had officers so --</p> <p>10 Q And who were they?</p> <p>11 A We did prepare the list of officers, I have with</p> <p>12 Exhibit 4, Stacy Randall being a director of</p> <p>13 Windy Waters between a certain date range. So she</p> <p>14 was director between 1998 and May 13, 2020. In</p> <p>15 that window of time, she was the sole director,</p> <p>16 from 2015 to May 13 of 2020, and she was also the</p> <p>17 president of Windy Waters from 2007 to May 13, 2020.</p> <p>18 Currently Reed is the sole director and</p> <p>19 president of Windy Waters.</p> <p>20 Q Anyone else?</p> <p>21 A Mike Kiesler has been the secretary of</p> <p>22 Windy Waters since 2007 and then the treasurer</p> <p>23 since 2003.</p> <p>24 Q Okay. After now reviewing Exhibit 4, are you able</p> <p>25 to offer any testimony as to how many employees</p>	<p>1 officers, directors then all use Widen Enterprises</p> <p>2 email accounts?</p> <p>3 A To my knowledge, yes.</p> <p>4 Q What time of day did Windy Waters' officers and</p> <p>5 directors perform their jobs?</p> <p>6 MS. WITTENBERG: I'm going to</p> <p>7 object to this as outside of the scope of the</p> <p>8 topic, but, again, this is one where I'm</p> <p>9 willing to give a little leeway and just</p> <p>10 preserve that objection here if you want to</p> <p>11 answer if you know.</p> <p>12 A Yeah. I, again, did not expect this line of</p> <p>13 questioning related to this topic. I would say</p> <p>14 that whenever a task needed to be completed, it</p> <p>15 would have been completed.</p> <p>16 Q So is it fair to say, then, that Windy Waters'</p> <p>17 officers performed their duties to Windy Waters</p> <p>18 while simultaneously working their normal paid</p> <p>19 jobs at Widen Enterprises?</p> <p>20 MS. WITTENBERG: Objection.</p> <p>21 Misstates testimony. Answer if you can.</p> <p>22 A The tasks performed by the officers of Windy Waters</p> <p>23 were performed as needed.</p> <p>24 Q Yes, but did they perform them while working as</p> <p>25 part of their jobs at Widen Enterprises?</p>
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<p>1 Windy Waters had?</p> <p>2 A What do you mean by employees?</p> <p>3 Q People who were employed by Windy Waters to work</p> <p>4 there to support it.</p> <p>5 MS. WITTENBERG: I'll object to the</p> <p>6 extent that it calls for a legal conclusion</p> <p>7 as to who constitutes an employee.</p> <p>8 A Yeah. The management of Windy Waters was limited</p> <p>9 in terms of its operations. So the officers and</p> <p>10 directors were the only people who were affiliated</p> <p>11 with it.</p> <p>12 Q So there were no W-2 paid employees of Windy Waters?</p> <p>13 A Not to my knowledge.</p> <p>14 Q Okay. With respect to the officers or directors</p> <p>15 of Windy Waters, did they use Windy Waters email</p> <p>16 addresses when they corresponded?</p> <p>17 A Not to my knowledge.</p> <p>18 Q Rather, they used the Widen Enterprises email</p> <p>19 addresses; is that correct?</p> <p>20 A Some would have used Widen email accounts.</p> <p>21 Q What other accounts would they have used?</p> <p>22 A I'm unaware that Stacy Randall would have had a</p> <p>23 Widen email account. So I do not know what</p> <p>24 account she may have used.</p> <p>25 Q So with the exception of Stacy Randall, did the</p>	<p>1 MS. WITTENBERG: Same objection.</p> <p>2 A They performed them when there was a task that</p> <p>3 needed to be completed.</p> <p>4 Q So is it that you don't know whether they</p> <p>5 performed those while working their normal paid</p> <p>6 job at Widen Enterprises? Because you haven't</p> <p>7 answered my question. I'm just curious as to why.</p> <p>8 So my question, I want to repeat it. Did</p> <p>9 they perform their duties as they arose while</p> <p>10 working their normal paid jobs at Widen Enterprises?</p> <p>11 A I would say they did their jobs for Windy Waters</p> <p>12 as needed at whatever time they were needed to be</p> <p>13 performed, and whether that was middle of the day</p> <p>14 or into the evening, that was -- the job was done</p> <p>15 that needed to be done at whatever time it needed</p> <p>16 to be delivered.</p> <p>17 Q Were there any resources that Windy Waters</p> <p>18 provided its officers or staff that were not owned</p> <p>19 by Widen Enterprises?</p> <p>20 MS. WITTENBERG: I'm going to</p> <p>21 object again that it's outside of the scope</p> <p>22 of the organization, management, and</p> <p>23 governance of Windy Waters. And I know</p> <p>24 Matthew Gonnering took, I believe it's seven,</p> <p>25 just about seven full hours of his testimony</p>

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<p>1 here.</p> <p>2 Again, I'm trying to work with you here,</p> <p>3 but we're going to reach a point where we're</p> <p>4 going to be cutting him off. If you know</p> <p>5 individually, go ahead and answer.</p> <p>6 A Can you repeat the question?</p> <p>7 Q Sure. I'll rephrase that.</p> <p>8 Did Widen -- excuse me. Did Windy Waters</p> <p>9 provide all the resources that were required of</p> <p>10 its officers and staff or were those resources</p> <p>11 provided by another entity, such as Widen</p> <p>12 Enterprises?</p> <p>13 MS. WITTENBERG: Same objections</p> <p>14 and object to it being vague as well. But</p> <p>15 go ahead.</p> <p>16 A Personally, I do not know who provided those</p> <p>17 resources.</p> <p>18 Q Who directed the activities of Windy Waters'</p> <p>19 officers or employees?</p> <p>20 MS. WITTENBERG: Objection. Vague.</p> <p>21 A Can you be more --</p> <p>22 Q Can you answer it?</p> <p>23 A Can you be more specific?</p> <p>24 Q Yeah. Who oversaw Windy Waters' officers and</p> <p>25 employees?</p>	<p>1 legal conclusion, but go ahead.</p> <p>2 A Stacy was president of Windy Waters from 2007</p> <p>3 until May 13, 2020, so in that timeframe.</p> <p>4 Q Okay. So did Stacy -- would Stacy then have</p> <p>5 directed Mr. Kiesler to refuse Windy Waters buying</p> <p>6 back \$50,000 worth of her shares?</p> <p>7 A Can you repeat that?</p> <p>8 MR. CAMELI: Sure. Will you please</p> <p>9 repeat that?</p> <p>10 (Question read)</p> <p>11 A Would Stacy have refused Mike to buy back her</p> <p>12 shares? Stacy, in her role as president, would</p> <p>13 have presidential duties related to that, and she</p> <p>14 would have had oversight over Mike in his role as</p> <p>15 treasurer and secretary.</p> <p>16 Q So she -- you're saying she had the authority to</p> <p>17 direct Mr. Kiesler in May of 2020 to determine</p> <p>18 whether her shares, \$50,000, would be bought back</p> <p>19 by the company or not, is that what you're saying?</p> <p>20 MS. WITTENBERG: And, again, I'm</p> <p>21 going to object that it calls for a legal</p> <p>22 conclusion, but go ahead, if you know.</p> <p>23 A The role of the president would be to have that,</p> <p>24 and the role of the treasurer in this case would</p> <p>25 be to determine if that was feasible. But</p>
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<p>1 MS. WITTENBERG: Again, object to</p> <p>2 form as vague, but go ahead if you can.</p> <p>3 A By way of time, so in current state, the</p> <p>4 president, which is Reed, oversees Windy Waters</p> <p>5 and the officers, and the same would be true in</p> <p>6 previous time periods by way of the role of the</p> <p>7 president. They would oversee the organization</p> <p>8 and officers.</p> <p>9 Q Okay. So I'm going to try and phrase it another</p> <p>10 way.</p> <p>11 Who had management authority over</p> <p>12 Windy Waters' officers and employees?</p> <p>13 MS. WITTENBERG: And I'll object</p> <p>14 to the extent that it calls for a legal</p> <p>15 conclusion, but go ahead.</p> <p>16 A Generally, the president of the organization is</p> <p>17 responsible for that.</p> <p>18 Q And that would have been Reed Widen?</p> <p>19 A At various points it would have been Reed. At</p> <p>20 other points it would have been Stacy.</p> <p>21 Q Tell me the points that Stacy would have had</p> <p>22 management authority over officers and employees</p> <p>23 of Windy Waters.</p> <p>24 MS. WITTENBERG: And, again, I'll</p> <p>25 object to the extent that it's calling for a</p>	<p>1 ultimately Stacy would have had, in her role as</p> <p>2 president, the president would have oversight</p> <p>3 over --</p> <p>4 Q She had the -- she would have had the authority to</p> <p>5 direct those types of buybacks; correct?</p> <p>6 MS. WITTENBERG: And, again,</p> <p>7 objection that it calls for a legal conclusion.</p> <p>8 Q If you know. If you know. If you don't know it,</p> <p>9 you don't know.</p> <p>10 A Yeah. In her role as president, that would be my</p> <p>11 understanding.</p> <p>12 Q Okay. On May 13 of 2020, what was Reed Widen's</p> <p>13 role at Windy Waters?</p> <p>14 A Reed was sole director and president of</p> <p>15 Windy Waters from May 13, 2020, to present.</p> <p>16 Q And what about before?</p> <p>17 A He did not have a role at Windy Waters as an</p> <p>18 official capacity but did provide input based on</p> <p>19 his familiarity with the organization.</p> <p>20 Q How else would you describe his role prior to</p> <p>21 May 13 of 2020 at Windy Waters?</p> <p>22 MS. WITTENBERG: Objection. Vague.</p> <p>23 But answer if you can.</p> <p>24 A I would say that because this was his role at</p> <p>25 Windy Waters based on his familiarity with</p>

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<p>1 Windy Waters and the operating entity of Widen and</p> <p>2 that it was a family-owned business, that he would</p> <p>3 provide input where it was needed.</p> <p>4 Q Did he have any authority at Windy Waters prior to</p> <p>5 May 13 of 2020?</p> <p>6 MS. WITTENBERG: And, again, I'll</p> <p>7 object to the extent that it calls for a</p> <p>8 legal conclusion. Answer if you can.</p> <p>9 A Reed would have provided input into those -- into</p> <p>10 matters that were related to the family business.</p> <p>11 Q But did he have any authority to make decisions</p> <p>12 about Windy Waters prior to May 13 of 2020?</p> <p>13 MS. WITTENBERG: Same objection.</p> <p>14 A He did not have an officer or a director role</p> <p>15 before that.</p> <p>16 Q And prior to May 13 of 2020, did you ever observe</p> <p>17 him exercise management control over decisions of</p> <p>18 Windy Waters?</p> <p>19 MS. WITTENBERG: Objection. Are</p> <p>20 you asking him individually, for an individual</p> <p>21 capacity information?</p> <p>22 MR. CAMELI: Both, really.</p> <p>23 Whatever the basis of his knowledge is.</p> <p>24 A I observed Reed making decisions in a management</p> <p>25 capacity when decisions needed to be made and no</p>	<p>1 necessarily means that it concerns those who</p> <p>2 had decisionmaking authority.</p> <p>3 MS. WITTENBERG: What was the</p> <p>4 question, though? I may have misheard it.</p> <p>5 I heard something different. Can you read it</p> <p>6 back?</p> <p>7 MR. CAMELI: Sure. Will you read</p> <p>8 it back, please?</p> <p>9 (Question read)</p> <p>10 MS. WITTENBERG: Okay. So I've</p> <p>11 made the objections, but go ahead and give an</p> <p>12 answer if you can.</p> <p>13 A I didn't expect that line of questioning for this</p> <p>14 topic, so I do not have --</p> <p>15 Q Yeah. So if we look at -- go to your Exhibit 1,</p> <p>16 which are the topics identified in the Notice of</p> <p>17 Deposition. I want to talk about this a little</p> <p>18 bit more later, but go to item 10, please.</p> <p>19 So the first topic identified under item 10</p> <p>20 refers to all stock transactions involving</p> <p>21 Windy Waters. Did I read that correctly?</p> <p>22 A You did.</p> <p>23 Q Okay. So I'm asking about the stock transaction</p> <p>24 concerning Stacy Randall's request for the company</p> <p>25 to buy \$50,000 worth of her stock.</p>
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<p>1 other people were making those decisions.</p> <p>2 Q Again, we're talking about prior to May 13 of</p> <p>3 2020; is that correct?</p> <p>4 A Correct. That's correct.</p> <p>5 Q All right. Did Reed Widen ever direct operations</p> <p>6 at Windy Waters before May 13 of 2020?</p> <p>7 MS. WITTENBERG: Objection. Vague.</p> <p>8 A I wouldn't say that Windy Waters had operations.</p> <p>9 There were very little management responsibilities</p> <p>10 there, so I wouldn't consider it operations. Reed</p> <p>11 would step in as needed when decisions were needed</p> <p>12 to be made.</p> <p>13 Q Did Reed Widen tell Mr. Kiesler not to buy back</p> <p>14 \$50,000 of shares of Stacy Randall's that belonged</p> <p>15 to Windy Waters?</p> <p>16 MS. WITTENBERG: Object to it being</p> <p>17 outside the scope of the deposition topics</p> <p>18 here. If you can point to one this is under,</p> <p>19 I could maybe -- let me know, but I think</p> <p>20 we're to the point where we've approached the</p> <p>21 boundary and need to say let's move on.</p> <p>22 MR. CAMELI: Yeah. So I would say</p> <p>23 that this is all part of topic 3. It goes to</p> <p>24 the organization, management, and governance</p> <p>25 of Windy Waters, and those who had -- which</p>	<p>1 Now, with that in mind, I'm asking if Reed</p> <p>2 Widen directed Mr. Kiesler or any other party to</p> <p>3 not buy back Ms. Randall's stock.</p> <p>4 MS. WITTENBERG: I'm going to</p> <p>5 object for the record, and you weren't on</p> <p>6 these calls, I know, Mark, but we had</p> <p>7 discussions with counsel that were</p> <p>8 memorialized in emails about what the scope</p> <p>9 of this topic was, topic 10 that you just</p> <p>10 read, where plaintiff's counsel, I don't</p> <p>11 recall who, explained that they were looking</p> <p>12 for confirmation of the details in the stock</p> <p>13 transaction register, correct any details</p> <p>14 that were wrong, and information about</p> <p>15 whether the stock price was negotiated, or</p> <p>16 that person had counsel, and who initiated</p> <p>17 that sale. So that was the scope of the</p> <p>18 topic as it was agreed by counsel, so this</p> <p>19 question goes beyond that scope.</p> <p>20 MR. CAMELI: So I appreciate that,</p> <p>21 Counsel. I'm just looking now at the email</p> <p>22 that you're referencing, and it's item 5.</p> <p>23 We probably should mark this.</p> <p>24 (Exhibit No. 5 marked for</p> <p>25 identification)</p>

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<p>1 MR. CAMELI: If we go to page 7 2 of what's been marked as Exhibit 5, it 3 references on item 5, I believe here, 4 Ms. Wittenberg, that you had written to 5 members of our firm that with respect to 6 item 10 of the notice, you explained you were 7 looking for -- recapping the conversation 8 with our folks, that you were looking for 9 confirmation of the details in the stock 10 transaction register, and any correction of 11 any details that are incorrect, as well as 12 information about whether stock price -- the 13 stock price was negotiated, whether the 14 individuals were represented by counsel, and 15 who initiated the sale, and I believe our 16 response to that were these were examples 17 only and do not limit the topics to these 18 narrow categories. 19 So that's why we're asking this 20 question. And will you allow the witness to 21 respond to it? 22 MS. WITTENBERG: Again, I will 23 restate the objection. I understand what 24 you've pointed me to. Still, to the best of 25 our ability trying to understand the scope of</p>	<p>1 Answer if you can. 2 A Windy Waters had owned Widen Enterprises, and 3 Windy Waters also had investments, so there were 4 differences between Windy and Widen. 5 Q And the sole difference was the assets, the 6 securities that you previously identified; 7 correct? 8 A The marketable securities, yes. That was part of 9 Windy Waters. 10 Q Uh-huh. So with respect to Mr. Kiesler as 11 treasurer of Windy Waters, would he report his 12 activities with respect to ownership transactions 13 at Windy Waters to you? 14 A Would he report his transactions of ownership 15 responsibilities to me? 16 Q His activities with respect to ownership 17 transactions of Windy Waters, would he have 18 reported those to you? 19 A I don't know that he did, but he would not have 20 had to. 21 Q Okay. So he was -- you were his boss at Widen 22 Enterprises; correct? 23 A Correct. 24 Q So you had no expectation that ownership 25 transactions of Windy Waters would ever come to</p>
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<p>1 the topic, we did not understand this to be 2 within it. If you can answer, go ahead. 3 A In preparing for topic 10, I did not anticipate 4 that, and I did not expect that. 5 Q So you don't know the answer -- either in your 6 capacity as a Windy Waters representative or in 7 your individual capacity, you do not know the 8 answer to that question? 9 A Correct. 10 Q Now, Mr. Gonnering, you became a shareholder of 11 Windy Waters sometime before 2008; is that correct? 12 A I believe it was in 2008, and I can refer to a 13 stock register to confirm that. 14 Q Okay. Why did you become a shareholder? Tell me 15 a little bit about how that came about. 16 A As Matthew -- why did Matthew Gonnering become -- 17 why did I become a shareholder? 18 Q Yes, sir. 19 A To participate in the ownership of Windy Waters. 20 Q Yeah. And, really, Windy Waters and Widen at that 21 time were not distinguishing between themselves 22 for purposes of ownership interests; isn't that 23 correct? 24 MS. WITTENBERG: Objection. Vague. 25 Argumentative. Calls for a conclusion.</p>	<p>1 your attention that he may have been engaged in? 2 A I would have known that he was involved in those 3 in my capacity as his manager as the CFO of Widen 4 in that he was performing other tasks related to 5 Windy Waters. 6 Q And that's really because you were really 7 supervising his actions as treasurer of 8 Windy Waters; right? 9 A I would be supervising his actions as the CFO of 10 Widen. 11 Q And having -- and none of your supervisory roles 12 concerned his as treasurer of Windy Waters? 13 A Correct. 14 Q Was that always the case? 15 A In my role as CEO of Widen and his role as CFO of 16 Widen, that was always the case. 17 Q And what about with respect to Windy Waters and 18 his role as treasurer, did you ever supervise him 19 in that capacity? 20 A I did not. 21 Q Okay. And just so I'm clear on his role at 22 Windy Waters, that is Mr. Kiesler's role, he was 23 treasurer; correct? 24 A Correct. 25 Q What did you understand his duties to be as</p>

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<p>1 treasurer?</p> <p>2 A His duties as treasurer were financial oversight.</p> <p>3 Q Do you recall when he became treasurer?</p> <p>4 A He became treasurer in 2003.</p> <p>5 Q And you're looking at Exhibit 4 to refresh your</p> <p>6 memory on that?</p> <p>7 A Correct.</p> <p>8 Q Was he paid compensation as the treasurer of</p> <p>9 Windy Waters?</p> <p>10 A Not to my knowledge.</p> <p>11 Q Did he report to anyone in his capacity as</p> <p>12 treasurer of Windy Waters?</p> <p>13 A As treasurer, generally he would have reported to</p> <p>14 the president.</p> <p>15 Q And who would that have been at various times?</p> <p>16 A At various times that was Stacy. At other times</p> <p>17 that was Reed.</p> <p>18 Q Okay. And at what points would it have been</p> <p>19 Stacy?</p> <p>20 A Stacy was president from 2007 to May 13, 2020.</p> <p>21 Q And so he would have reported to Stacy during that</p> <p>22 period of time; correct?</p> <p>23 A Correct.</p> <p>24 Q He would have taken direction from her during that</p> <p>25 time?</p>	<p>1 MS. WITTENBERG: Sure.</p> <p>2 MR. CAMELI: I was just curious as</p> <p>3 to whether something had been prepared</p> <p>4 otherwise.</p> <p>5 MS. WITTENBERG: Not separate from</p> <p>6 that.</p> <p>7 MR. CAMELI: Okay.</p> <p>8 BY MR. CAMELI:</p> <p>9 Q Do you recall when Mr. Kiesler -- well, I think</p> <p>10 we're going to hold off until we get to number 10</p> <p>11 on that.</p> <p>12 How would you describe Stacy Randall's</p> <p>13 involvement in the operations of Windy Waters?</p> <p>14 A Absent.</p> <p>15 Q And can you be a little more specific about that?</p> <p>16 A Did not participate.</p> <p>17 Q And I think you mentioned that she was a</p> <p>18 shareholder of Windy Waters' stock from its</p> <p>19 creation until her redemption of her stock in</p> <p>20 May of 2020; is that correct?</p> <p>21 A She was a shareholder, yeah, from when she was</p> <p>22 provided shares up until her redemption May 13,</p> <p>23 yes, 2020.</p> <p>24 Q And then she was, you mentioned, president from</p> <p>25 2004 to 2020; correct?</p>
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<p>1 A If it was provided.</p> <p>2 Q Do you recall when he received shares of</p> <p>3 Windy Waters' stock?</p> <p>4 A I have a stock register prepared to review and can</p> <p>5 do that.</p> <p>6 Q Okay. So we'll get to that shortly.</p> <p>7 I'm sorry. You said you do have a stock</p> <p>8 register prepared?</p> <p>9 A We did prepare the stock.</p> <p>10 Q So would you like to reference that right now to</p> <p>11 answer that question?</p> <p>12 A If you would like an answer to that question right</p> <p>13 now.</p> <p>14 Q I would like an answer to that question.</p> <p>15 A Okay.</p> <p>16 MS. WITTENBERG: And to be clear,</p> <p>17 it's the stock register that's referenced in</p> <p>18 topic 10. I don't know if you have them and</p> <p>19 you were going to use them anyway.</p> <p>20 MR. CAMELI: Okay. Yes, we have</p> <p>21 that.</p> <p>22 MS. WITTENBERG: It's those two.</p> <p>23 You can go ahead and use that.</p> <p>24 MR. CAMELI: We'll come back to</p> <p>25 that.</p>	<p>1 MS. WITTENBERG: Objection.</p> <p>2 Misstates testimony.</p> <p>3 MR. CAMELI: Ope, sorry. Don't</p> <p>4 want to do that.</p> <p>5 A 2007. 2007 to May 13, 2020.</p> <p>6 Q Sorry. Thank you for correcting me.</p> <p>7 How was the fact of her roles ever recorded?</p> <p>8 Are there meetings minutes, appointment documents,</p> <p>9 anything like that that would have recorded her</p> <p>10 role at Windy Waters?</p> <p>11 A In the corporate records it would have been</p> <p>12 recorded.</p> <p>13 Q And when you say corporate records, do you mean</p> <p>14 meeting minutes?</p> <p>15 A Yes.</p> <p>16 Q So if I looked at Windy Waters' meeting minutes,</p> <p>17 I will see references to her appointment as a</p> <p>18 director?</p> <p>19 A In preparation for this, we did surface that,</p> <p>20 and we can look at that now if you would like.</p> <p>21 Q Did the meetings reflected in the minutes ever</p> <p>22 take place?</p> <p>23 A No.</p> <p>24 Q What qualified Stacy Randall to be a director in</p> <p>25 Windy Waters, if you know?</p>

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<p style="text-align: right;">Page 57</p> <p>1 A I understand the family would determine who would 2 be a director. 3 Q And when you say the family, you mean all members 4 of the Widen family or particular members of the 5 Widen family? 6 A It may vary at points in time. I would -- 7 Q Well, tell me about how that would vary in points 8 of time. 9 A When the family was involved with ownership. 10 Q Uh-huh. 11 A So, for example, Stewart Widen would have 12 participated in things when he was a shareholder 13 but not after he was no longer a shareholder. So 14 the family, to include those who owned the voting 15 shares, would participate in determining the 16 directors. 17 Q And you said at other times it was different; 18 correct? 19 A When those family members were no longer involved, 20 it would have been different. 21 Q Okay. And at what point, if any, was Reed Widen 22 the only family member to participate in such 23 decisions? 24 A When he was the only voting shareholder. 25 Q Was there a time when he wasn't the only voting</p>	<p style="text-align: right;">Page 59</p> <p>1 A Experience as a director? 2 Q Yes. 3 A Not to my knowledge. 4 Q So you were mentioning that you thought she had 5 become -- or, excuse me. 6 Did she become president in 2008 of 7 Windy Waters? Is that right? 8 A She was the president of Windy Waters in 2007. 9 Q 2007. Thank you. Do you recall what qualified 10 her to be president of Windy Waters? 11 A What qualified her to be president, I do not. 12 Q Do you believe she had qualifications to be 13 president of Windy Waters? 14 A I believe the family would collaborate to 15 determine who would be best to serve in that 16 capacity. 17 Q So you had and have no opinion as to whether she 18 was qualified to be president? 19 A I know that amongst the family they would 20 collaborate to determine that, and so -- 21 Q Okay. But as a corporate representative here 22 today, you have no specifics as to what qualified 23 her to be president? 24 A I have no specifics of what qualified her to be 25 president, correct.</p>
<p style="text-align: right;">Page 58</p> <p>1 shareholder where he was making those decisions 2 himself, notwithstanding that? 3 MS. WITTENBERG: Objection. Vague. 4 Go ahead. 5 A What decision? 6 Q Decisions about who is and who wasn't going to be 7 a director. 8 A Was there a time that he would make a decision 9 about who was going to be a director when he 10 wasn't the only -- 11 Q No, when he was the only -- 12 A When he was the only. 13 Q Yeah. I'm sorry. You had it right. When he 14 wasn't the only. 15 Did he ever exercise authority on his own 16 even though there were others that were involved 17 in an ownership interest? 18 A I understood it to be collaborative amongst the 19 family. 20 Q Okay. Are you aware of whether Stacy Randall had 21 any prior experience as a director before she 22 became one with Widen -- Windy Waters? 23 A I am not. 24 Q And she didn't have any such experience at Widen 25 as well; right?</p>	<p style="text-align: right;">Page 60</p> <p>1 Q Would Reed Widen have been more qualified to be 2 president than Stacy? 3 A The family determined who would be the most 4 appropriate for that role. So when they 5 collaborated, that's what they determined. 6 Q Okay. So there is -- again, in your capacity as 7 a representative of the company, you're unable to 8 offer an answer as to whether Reed would have been 9 more qualified than Stacy? 10 A My answer is that Stacy was the person chosen. 11 Q Are you familiar with whether she had any prior 12 experience at Windy Waters or Widen Enterprises or 13 anywhere else in a leadership capacity? 14 MS. WITTENBERG: I'm going to 15 object. I think this goes outside the scope 16 of the topics, but if it's within the context 17 of topic 8, which is the election of the 18 officers and directors, go ahead and answer. 19 A Did she have a leadership capacity prior to this, 20 is that the way I understand it? 21 Q And prior experience. 22 A I'm aware that she was an employee of Widen 23 Enterprises. 24 Q Doing what? 25 A In various administrative roles.</p>

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<p>1 Q She was a receptionist; correct?</p> <p>2 A Yeah. Administrative roles.</p> <p>3 Q Okay.</p> <p>4 A I don't know the official title.</p> <p>5 Q When you say administrative roles, you mean like a support staff in an office setting?</p> <p>7 A That's what I would mean by administrative, yes.</p> <p>8 Q Okay. Was there any discussion with Stacy by anyone at Windy Waters about her being president of Windy Waters prior to her being appointed as such?</p> <p>12 A Reed communicated to Stacy.</p> <p>13 Q He communicated to her ahead of her becoming president that she would be president?</p> <p>15 A Yes.</p> <p>16 Q And do you recall what the substance of that conversation was?</p> <p>18 A We do not have recollection of that detail.</p> <p>19 Q Do you recall when that conversation would have occurred?</p> <p>21 A Prior to her role of president.</p> <p>22 Q Did Reed or anyone ever provide a justification for naming her to -- naming her as president of Windy Waters?</p> <p>25 A Can you repeat that again?</p>	<p>1 that correct?</p> <p>2 A That's my understanding.</p> <p>3 Q Did Stacy direct the actions of other officers at Windy Waters?</p> <p>5 A Did Stacy direct the actions of other officers at Windy Waters? At what point in time?</p> <p>7 Q During her presidency.</p> <p>8 A Her role as president was a nonparticipatory president or an absent president, so I do not know if she directed the officers on anything.</p> <p>11 Q So it would seem, would you agree, that if she was nonparticipatory, she would not have been directing any actions of any officers at Windy Waters; correct?</p> <p>15 A That would be -- yes, I agree.</p> <p>16 Q For each year that Stacy was elected a director, what was the vote breakdown of those who voted for her to be a director?</p> <p>19 A We prepared the corporate records and minutes that we could go back and look to see those elections. I did not prepare and did not expect that line of questioning for this topic, but we can go and look at those records.</p> <p>24 Q Did Stacy ever vote her shares in favor of herself becoming a director?</p>
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<p>1 MR. CAMELI: Sure. Can you repeat that, please?</p> <p>3 (Question read)</p> <p>4 A Not to my knowledge.</p> <p>5 Q Do you know who had the idea of making her president?</p> <p>7 A The family would collaborate and determine that.</p> <p>8 Q Is that deliberative process documented anywhere that you're aware of?</p> <p>10 A The process of the family collaborating?</p> <p>11 Q And appointing Stacy as president.</p> <p>12 A I would want to check the corporate records around the appointment of her to that role.</p> <p>14 Q So you're not sure whether that's documented without looking at those first?</p> <p>16 A We prepared those documents to reference for accuracy.</p> <p>18 Q I'm not sure if I understood that. When you say we prepared those, do you mean the business documents?</p> <p>21 A I'd like to confirm that, in the corporate records that we can see that and look at that.</p> <p>23 Q So prior to her becoming president, Stacy was actually terminated as a receptionist at Windy Waters' subsidiary Widen Enterprises; isn't</p>	<p>1 A Again, I did not anticipate that and cannot provide that answer.</p> <p>3 Q Did Reed ever vote his shares in favor of Stacy becoming a director?</p> <p>5 A Same.</p> <p>6 Q Were you familiar with the process by which votes were gathered with respect to electing directors?</p> <p>8 A The process involved the collaboration of the family in determining what those officers looked like.</p> <p>11 Q And that was in the absence of any meeting. There were no corporate meetings; right?</p> <p>13 A Correct.</p> <p>14 Q So let me ask these same -- similar questions with respect to her appointment as president.</p> <p>16 Would she have voted in favor of herself to become president of Windy Waters?</p> <p>18 A I did not prepare for that line of questioning.</p> <p>19 Q Did the voting majority of the board of directors vote in favor of her to be appointed president?</p> <p>21 A Again, I did not prepare for that. The family would collaborate on those matters and determine those.</p> <p>24 Q Did anyone other than Reed participate in voting to appoint Stacy as officer of -- excuse me, as</p>

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<p>1 president or officer of Windy Waters?</p> <p>2 A The family at that time would have collaborated to</p> <p>3 determine that.</p> <p>4 Q And what would that -- where would that be</p> <p>5 documented?</p> <p>6 A We could look at the corporate records and</p> <p>7 determine where that might be.</p> <p>8 Q Okay.</p> <p>9 MS. WITTENBERG: Helpful to have</p> <p>10 some notes on this?</p> <p>11 THE WITNESS: Sure.</p> <p>12 MS. WITTENBERG: Here. Counsel,</p> <p>13 I'll give you a copy, too, here. I've just</p> <p>14 got to find it.</p> <p>15 (Exhibit No. 6 marked for</p> <p>16 identification)</p> <p>17 Q So you're being shown what has been marked now as</p> <p>18 Exhibit 6. Are these notes that you used in</p> <p>19 preparing for your testimony today?</p> <p>20 A They are.</p> <p>21 Q And they are -- they reference topic 8, the</p> <p>22 election of officers; is that correct?</p> <p>23 A That is correct.</p> <p>24 Q And would you like to review those in order to</p> <p>25 answer my previous question?</p>	<p>1 record of votes in favor of that?</p> <p>2 A These are the records that I prepared for today.</p> <p>3 Q So this would be the extent of whatever record</p> <p>4 there was --</p> <p>5 A To my knowledge, yes.</p> <p>6 Q -- under Exhibit 6?</p> <p>7 A In preparation for today, yes.</p> <p>8 Q And is this a compilation of data you obtained</p> <p>9 from another source?</p> <p>10 A This is the data that was the corporate records</p> <p>11 of Windy Waters, the elections of directors and</p> <p>12 officers, specifically between the date range of</p> <p>13 2004 and 2020.</p> <p>14 Q Okay. So when you say in these notes of yours,</p> <p>15 "The below chart shows a list of all elections of</p> <p>16 directors and officers between 2004 and 2020," the</p> <p>17 chart came from corporate records that you</p> <p>18 examined?</p> <p>19 A Correct.</p> <p>20 MS. WITTENBERG: I know we've been</p> <p>21 going a while here. Is there going to be a</p> <p>22 breaking point at some point? Not a huge</p> <p>23 rush from my perspective.</p> <p>24 MR. CAMELI: Yeah. We have been.</p> <p>25 Let me finish up this line before we move</p>
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<p>1 A Can you restate your previous question so that we</p> <p>2 can go to that specific line and date?</p> <p>3 Q In fact, I would like to hear what my previous</p> <p>4 question was.</p> <p>5 MS. WITTENBERG: We all would.</p> <p>6 MR. CAMELI: If you could do that,</p> <p>7 though, that would be great.</p> <p>8 (Question read)</p> <p>9 THE WITNESS: Thank you.</p> <p>10 A As I look on the top of the second page of</p> <p>11 Exhibit 6, I'm looking at the top row, which has</p> <p>12 the document of consent of BOD with the date of</p> <p>13 1/1/2007, and the election action item stated</p> <p>14 there is -- there are two bullet points there.</p> <p>15 The one is the acknowledgment of the resignation</p> <p>16 of Stewart as president, and then the second</p> <p>17 bullet point is elect Stacy as president and Mike</p> <p>18 Kiesler as secretary/treasurer. And then in the</p> <p>19 rightmost column, I look at the signatory in that</p> <p>20 as Stacy and Price as directors.</p> <p>21 So at least in my understanding of that</p> <p>22 question playback, it would be Stacy and Price</p> <p>23 determining or electing Stacy as president.</p> <p>24 Q So for each year, then, that she would have been</p> <p>25 appointed president, would there have been a</p>	<p>1 then to another topic. So it won't be too</p> <p>2 long, if that's okay.</p> <p>3 MS. WITTENBERG: Sure.</p> <p>4 MR. CAMELI: All right.</p> <p>5 BY MR. CAMELI:</p> <p>6 Q Was Stacy paid for her role as president?</p> <p>7 A Not to my knowledge.</p> <p>8 Q What were her duties as president?</p> <p>9 A General duties of a president would be oversight</p> <p>10 of the organization, accountability for its</p> <p>11 actions.</p> <p>12 Q But if I heard your testimony earlier, she was</p> <p>13 absent and actually did not perform those duties;</p> <p>14 is that correct?</p> <p>15 A She would be the president of the organization but</p> <p>16 not performing her duties as president. But --</p> <p>17 Q Who -- go ahead. I'm sorry.</p> <p>18 A But still accountable for it.</p> <p>19 Q Who did she report to as president?</p> <p>20 A The president would report to a board.</p> <p>21 Q And did she take direction from the board?</p> <p>22 A I did not prepare for that question, and I am not</p> <p>23 aware of that.</p> <p>24 Q Okay. Are you aware of any instance in which she</p> <p>25 ever took direction from or an instance in which</p>

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<p>1 the board actually did provide her direction?</p> <p>2 A I am not.</p> <p>3 Q Did the board ever confront Stacy about her</p> <p>4 absence?</p> <p>5 A I am unaware of any action to confront her.</p> <p>6 Q So that would mean also that she was never</p> <p>7 reprimanded, that you know of, regarding her role</p> <p>8 or inaction as president?</p> <p>9 A I am unaware of any reprimands related to that.</p> <p>10 Q Did she ever participate -- did Stacy, that is,</p> <p>11 ever participate in any decisionmaking or</p> <p>12 governance at Windy Waters?</p> <p>13 A She did participate in those matters as she was</p> <p>14 made aware of certain actions that she needed to</p> <p>15 take in her capacity as president.</p> <p>16 Q And what would -- can you describe with greater</p> <p>17 detail what those actions were?</p> <p>18 A When she would need to agree to -- for example,</p> <p>19 we prepared waivers of minutes, as an example.</p> <p>20 She would need to sign off on those, and she would</p> <p>21 be made aware of what those documents were, and</p> <p>22 Reed and Mike would make her aware of those, and</p> <p>23 she would give approval for those, as an example.</p> <p>24 Q Was Stacy notified of corporate actions and</p> <p>25 transactions of Windy Waters?</p>	<p>1 A Correct.</p> <p>2 Q What about the actions by the board of -- what</p> <p>3 about actions of the board of Windy Waters, was</p> <p>4 she ever notified of those?</p> <p>5 A Any action that she needed to be notified on she</p> <p>6 was notified on by Reed or Mike by --</p> <p>7 Q Now -- I'm sorry. Now, once again, without any</p> <p>8 written record of that that you're aware of?</p> <p>9 A That I'm aware of, yes.</p> <p>10 Q Same answer with respect to actions of officers?</p> <p>11 A That she was made aware of those?</p> <p>12 Q Yes.</p> <p>13 A Same answer.</p> <p>14 Q Same answer?</p> <p>15 A Same answer.</p> <p>16 Q Is that also the same answer with respect to being</p> <p>17 made aware of the financial performance of</p> <p>18 Windy Waters or the compensation of its officers?</p> <p>19 A That when she needed to be made aware of those,</p> <p>20 she was made aware of those.</p> <p>21 Q Well, is there ever an instance in which the</p> <p>22 financial performance of Windy Waters or</p> <p>23 compensation of officers was not, was not shared</p> <p>24 with her?</p> <p>25 A Information would have been shared with her when</p>
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<p>1 A She was.</p> <p>2 Q And how was she notified of those?</p> <p>3 A Reed and Mike notified her.</p> <p>4 Q And did they do that by telephone, by email, or</p> <p>5 some other means?</p> <p>6 A They would have notified her through conversation,</p> <p>7 possibly through email. But she was notified.</p> <p>8 Q Do you believe that there were any instances in</p> <p>9 which she was notified in writing of corporate</p> <p>10 actions and transactions of Windy Waters?</p> <p>11 A I'm not aware.</p> <p>12 Q What about share subscriptions and purchases,</p> <p>13 was she notified of those types of things at</p> <p>14 Windy Waters?</p> <p>15 A She was.</p> <p>16 Q How was she notified?</p> <p>17 A Reed or Mike would have notified her by phone or</p> <p>18 other communication.</p> <p>19 Q Okay. Is your answer the same to your earlier</p> <p>20 answers regarding how she was notified of</p> <p>21 corporate actions?</p> <p>22 A Yeah. By phone or in person or other means of</p> <p>23 communications, yes.</p> <p>24 Q Okay. But you're unaware of any instance in which</p> <p>25 that was done in writing?</p>	<p>1 she would ask for it. So, no, there would not</p> <p>2 have been cases of withholding information from</p> <p>3 her.</p> <p>4 Q Okay. So it was communicated to her only if she</p> <p>5 asked for it, is that what I understand you to</p> <p>6 say?</p> <p>7 MS. WITTENBERG: Objection. Vague.</p> <p>8 A Is there a level of specificity we can go to</p> <p>9 there?</p> <p>10 Q Yeah. So with respect to compensation of</p> <p>11 officers, she would have been advised of it if</p> <p>12 she had asked about it; is that correct?</p> <p>13 A I believe she would have been made aware of it</p> <p>14 from Reed or Mike --</p> <p>15 Q Yeah.</p> <p>16 A -- about the compensation. And she also received</p> <p>17 compensation as an officer, so she would have been</p> <p>18 made aware of it because of receiving it.</p> <p>19 Q I'm just trying to get a sense here, Mr. Gonnering,</p> <p>20 as to the method by which or what was the trigger</p> <p>21 by which she was notified.</p> <p>22 A Uh-huh.</p> <p>23 Q So with that in mind, with that in mind, would</p> <p>24 all of these notifications only have occurred if</p> <p>25 she asked specifics about such actions?</p>

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<p>1 A I think these notifications would have occurred</p> <p>2 for the matters that we've gone through up until</p> <p>3 financial performance of the operating entity, as</p> <p>4 an example. That would have been provided to her</p> <p>5 upon her request but also likely provided to her</p> <p>6 as part of her dialogue with Reed and Mike.</p> <p>7 Q Okay. Once again, we're not aware of whether any</p> <p>8 of that would have been communicated in writing?</p> <p>9 A I'm thinking about something else that we prepared</p> <p>10 for this with respect to disclosures, that Stacy</p> <p>11 was provided information. So there are some</p> <p>12 things that have been disclosed to her. So --</p> <p>13 Q Yeah. We're going to, I think, come back to</p> <p>14 disclosures in a little bit, so maybe that will</p> <p>15 be a more topical time for you to talk about some</p> <p>16 of that again.</p> <p>17 A Okay.</p> <p>18 Q Okay. Did Stacy receive compensation each year</p> <p>19 that she served as an officer and/or director of</p> <p>20 Windy Waters?</p> <p>21 A She did.</p> <p>22 MR. CAMELI: Okay. All right.</p> <p>23 So I think this is a good time for a break.</p> <p>24 MS. WITTENBERG: Sure.</p> <p>25 THE VIDEOGRAPHER: Going off the</p>	<p>1 Reed Widen making those decisions? When do you</p> <p>2 estimate that that happened?</p> <p>3 A Consistent with the family collaboration with</p> <p>4 respect to the shareholder status, I would say if</p> <p>5 Reed ever was the only family member with shares,</p> <p>6 then that would be the case.</p> <p>7 Q Because eventually it was just Reed and Stacy,</p> <p>8 correct, as to family members?</p> <p>9 A I would need to verify that with the ownership</p> <p>10 records.</p> <p>11 Q If it were Reed and Stacy at any point, would you</p> <p>12 agree that it would really be Reed who was the</p> <p>13 decision maker in that dynamic?</p> <p>14 A I would say it would be a collaboration of Reed</p> <p>15 and Stacy if that dynamic --</p> <p>16 Q So you do believe, then, that Stacy was making</p> <p>17 decisions when only she and Reed -- or was</p> <p>18 participating in board decisions when it would</p> <p>19 have been only she and Reed as the family members?</p> <p>20 A To the degree that she would have chosen to</p> <p>21 participate.</p> <p>22 Q Yeah. But how do you reconcile that with your</p> <p>23 earlier testimony that she was absent, she wasn't</p> <p>24 there, she wasn't participating in Windy Waters'</p> <p>25 affairs?</p>
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<p>1 record at 10:49.</p> <p>2 (Recess)</p> <p>3 THE VIDEOGRAPHER: We're back on</p> <p>4 the record at 11:13.</p> <p>5 BY MR. CAMELI:</p> <p>6 Q Mr. Gonnering, I have one other follow-up question</p> <p>7 based on testimony that we were discussing prior</p> <p>8 to the break, and that is this idea of family</p> <p>9 collaboration on decisionmaking concerning</p> <p>10 Windy Waters.</p> <p>11 Will you tell me who you understand that</p> <p>12 to include when you say the family in the context</p> <p>13 of family collaboration on Windy Waters'</p> <p>14 decisionmaking?</p> <p>15 A I understand that to be the family who was</p> <p>16 shareholders in the business at that time.</p> <p>17 Q So it actually changed over the years as some</p> <p>18 people, Mr. Widen, Mark Widen, passed away and</p> <p>19 others came -- you know, redeemed stock and things</p> <p>20 of this sort so that it would change based on</p> <p>21 those types of things; right?</p> <p>22 A Yeah. And the example that I provided when we</p> <p>23 did talk about that was the Stewart example, so</p> <p>24 that was my understanding, yes.</p> <p>25 Q When do you estimate that it was ultimately just</p>	<p>1 A To the degree she was willing to participate was</p> <p>2 the amount that she would have collaborated in</p> <p>3 that. So --</p> <p>4 Q Okay.</p> <p>5 A -- there was a collaboration and the parties that</p> <p>6 would collaborate would have to be willing to</p> <p>7 collaborate, and that would be her unwilling to</p> <p>8 collaborate in that example.</p> <p>9 Q Okay. Well, can you think of an instance in which</p> <p>10 then she would have been part of a collaboration</p> <p>11 in the decisionmaking?</p> <p>12 A When she would have wanted to be.</p> <p>13 Q Okay. So you're speaking in hypotheticals, and</p> <p>14 I understand that. But I'm asking the question</p> <p>15 in terms of what happened or didn't happen.</p> <p>16 Are you aware of any instance in which she</p> <p>17 would have been collaborating in Windy Waters'</p> <p>18 board decisions when it was only she and Reed as</p> <p>19 family shareholders?</p> <p>20 A I'm -- well, I'm aware that she would be invited</p> <p>21 to collaborate in all of those cases, all of those</p> <p>22 matters.</p> <p>23 Q Yeah. So is your answer that -- again, that</p> <p>24 refers more to the hypothetical construct. I'm</p> <p>25 just trying to figure out -- and if the answer is</p>

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<p>1 you're unaware of any specific instance, that's 2 okay. But that's what I'm trying to get at here. 3 Are you aware of an instance in which she 4 actively and actually did collaborate with Reed 5 on board making decisions for Windy Waters? 6 A I would restate again I'm aware that she would be 7 invited to collaborate and whether or not she 8 chose to is unknown to me at this time. 9 MR. CAMELI: Okay. So let's just 10 turn to topic 19, which, Counsel, I believe 11 is subject to a designation on other 12 testimony; correct? 13 MS. WITTENBERG: Yes. 14 MR. CAMELI: And that designation, 15 from what I understand, is that the testimony 16 that would have been elicited today, that 17 those designations represent the entirety of 18 what is known or reasonably available to 19 Windy Waters with respect to topic 19? 20 MS. WITTENBERG: The witness is not 21 prepared to testify on that topic today. 22 MR. CAMELI: Yeah. So, again, I 23 just want to make sure I understand the 24 designation significance, though. 25 My understanding is that the designated</p>	<p>1 MR. CAMELI: Yeah. So, again, just 2 so our record is clear for motion practice 3 that might arise out of this, so there are -- 4 there is evidence in your view that goes 5 outside the designated testimony of 6 Mr. Kiesler as it concerns topic 19 and 7 specifically as it concerns particular 8 documents; is that right? 9 MS. WITTENBERG: I don't know that 10 there is or isn't evidence outside of what he 11 talked about. I know that the topic listed 12 is use of Stacy Randall's signature stamp on 13 corporate documents of Windy Waters and that 14 Mike Kiesler testified at great length about 15 the practices, about the handling of the 16 signature stamp of even specific documents, 17 and it was covered thoroughly and well by 18 your co-counsel and that any further 19 testimony on the topic would be duplicative, 20 cumulative, and unnecessary. 21 MR. CAMELI: But you're not willing 22 to say that that designated testimony 23 represents the entirety of what is known or 24 reasonably available to Windy Waters with 25 respect to our topic 19?</p>
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<p>1 testimony -- and I'll read that into the 2 record here -- of Mr. Kiesler, that the 3 designated testimony represents the entirety 4 of what is known or reasonably available to 5 Windy Waters with respect to topic 19. 6 MS. WITTENBERG: And I believe we 7 clarified this over email. I understand your 8 position, your client's position is that that 9 is what the standard is and ours is not the 10 same, but we do confirm, and we do agree, 11 that the testimony that we designated 12 reflects the position of Windy Waters and 13 that it covered the topic fully and 14 thoroughly with those witnesses. 15 For example, there are documents that 16 are relevant on those cases -- or on those 17 topics that weren't read into the record but 18 that would be knowledge outside the scope of 19 what was testified about, but we're not 20 fighting over that. 21 So the point is any further testimony 22 would be superfluous. He's not prepared to 23 talk on those topics. We've met our 24 obligation to 30(b)(6) to designate those 25 portions of testimony.</p>	<p>1 MS. WITTENBERG: I couldn't -- 2 I couldn't commit to that, no, and I don't 3 think that that's necessary for the testimony 4 that could be above and beyond that to be 5 cumulative, duplicative, superfluous, 6 unnecessary, and overly burdensome. 7 MR. CAMELI: So let me read into 8 the water what -- read into the record what 9 we understand that testimony to be. It's 10 Mr. Kiesler's excerpted testimony on topic 19 11 at pages 31, 61 to 63, 67 to 68, 98 to 105, 12 107 to 137, 197, and 281 to 283, and this all 13 refers to his September 19, 2023, deposition. 14 Did I state that correctly? 15 MS. WITTENBERG: I did not pull it 16 up in time to confirm the numbers were right, 17 but if you read the email correctly, that is 18 our position, yes. 19 MR. CAMELI: Okay. So the one 20 objection that I have here is that unless you 21 are willing to say that that excerpted 22 testimony represents the entirety of what is 23 known and reasonably available to Windy Waters 24 with respect to topic 19, we don't believe 25 that the designation would sufficiently cover</p>

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<p style="text-align: right;">Page 81</p> <p>1 the topic as we would explore it otherwise. 2 So if you are not willing to say that, 3 we would proceed with asking questions on 4 topic 19. 5 MS. WITTENBERG: The witness is 6 not prepared to talk on those topics today. 7 We've made that very clear in email traffic. 8 Our position is well stated in email traffic. 9 We disagree with your understanding of the 10 case law. 11 MR. CAMELI: So we won't proceed, 12 then, with your representation that he's 13 unprepared to talk about those, but we would 14 reserve the right to raise it as a matter of 15 concern with the Court and possibly call -- 16 recall Mr. Gonnering to talk about those 17 topics. 18 MS. WITTENBERG: You've made your 19 record. We don't agree that that's 20 appropriate. We also would -- we would 21 perhaps take the position that that argument 22 has been waived because we have been trying 23 to work on this for weeks with you. But 24 understood. Record stated. We can move on. 25 MR. CAMELI: Yeah. Are you also --</p>	<p style="text-align: right;">Page 83</p> <p>1 has been designated in lieu of 30(b)(6) 2 testimony, and that is the testimony of Reed 3 Widen of August 23, 2023, at pages 40 to 41 4 and 93 to 96, the testimony of Mike Kiesler 5 of September 19, 2023, at page 25, at page 33 6 to 34, and page 262 to 268, and then, 7 finally, the previous testimony of 8 Mr. Gonnering of September 21, 2023, at 9 pages 89 to 97, page 106, 174, and 190. 10 Do you believe I stated those correctly? 11 MS. WITTENBERG: I believe you did. 12 MR. CAMELI: And I will ask again 13 whether this testimony, like I did with topic 14 19, does this testimony represent the 15 entirety of what is known or reasonably 16 available to Windy Waters with respect to 17 topic 20? 18 MS. WITTENBERG: And, again, our 19 position on this designation is the same as 20 it is with 19, that the topic was covered 21 thoroughly with the individuals who have the 22 most personal knowledge about this topic, and 23 it would be cumulative, unnecessary, overly 24 burdensome, duplicative to have a witness 25 prepare to testify on the topic when it's the</p>
<p style="text-align: right;">Page 82</p> <p>1 are you willing to say, as well, that there 2 isn't any information that will be offered by 3 defendants at trial that is otherwise not 4 contained in these designations as it 5 concerns topic 19? 6 MS. WITTENBERG: Again, I can't 7 state that. That's not the point of the 8 designation. 9 MR. CAMELI: Okay. I think you're 10 right, the record is made. So thank you. 11 All right. Moving on. We're going to 12 turn to topics 4 and 10. 13 Oh, I'm sorry. Before we move on, 14 let's go to 20, because I think 20 also was 15 a designated topic, is that correct, 16 Ms. Wittenberg? 17 MS. WITTENBERG: I believe that's 18 right. I've got to reopen that. 19 MR. CAMELI: Yeah. Go right ahead. 20 MS. WITTENBERG: Yes, that's 21 correct. 22 MR. CAMELI: Okay. And topic 20 23 concerns the sale of Widen Enterprises to 24 Acquia on September 24 of '21, and my 25 understanding is that the following testimony</p>	<p style="text-align: right;">Page 84</p> <p>1 same individuals who have that information 2 that have already been deposed. 3 MR. CAMELI: And Windy Waters -- 4 are you willing to say that Windy Waters has 5 no knowledge that's not contained in that 6 designated testimony? 7 MS. WITTENBERG: Again, I can't 8 make the representation. For example, there 9 could be documents that weren't read into the 10 record that would contain information on 11 those topics that were not within those pages 12 of testimony. But the topics were fully 13 covered, thoroughly covered. 14 MR. CAMELI: Okay. So because of 15 that qualification, we would be prepared to 16 discuss with this witness topic number 20. 17 Is the witness prepared to testify? 18 MS. WITTENBERG: No. 19 MR. CAMELI: Okay. Then we will 20 reserve our right to seek relief from the 21 Court as appropriate in that regard. 22 MS. WITTENBERG: Understood. 23 BY MR. CAMELI: 24 Q All right. Now let's move to topics 4 and 10. 25 So, Mr. Gonnering, if you can take the Notice of</p>

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<p>1 Deposition that's in front of you, Exhibit 1, 2 let's go to topic 4. Topic 4 states that you are 3 designated -- or that the designated topic on 4 is 4 the ownership, past and present, of Windy Waters. 5 Did I read that correctly? 6 A You did. 7 Q And you're prepared to testify about that topic 8 today? 9 A I am. 10 Q And what documents did you review to prepare for 11 testifying on behalf of Windy Waters about that 12 topic? 13 A I reviewed the stock ownership of Windy Waters 14 over time. 15 Q And then we have a noticed topic 10, which is 16 all stock transactions involving Windy Waters, 17 specifically the stock activity reflected in 18 Windy Waters' Class B stock register, to the 19 extent that such documents purport -- or document 20 purports to show all Class B stock transactions 21 involving Windy Waters as of February 22, 2021, 22 and the stock activity reflected in Windy Waters' 23 Class A stock register, to the extent that such 24 document purports to show all Class A stock 25 activity involving Windy Waters as of February 22,</p>	<p>1 that chart from Mr. Kiesler's declaration? 2 A I do. 3 Q And that shows stock transactions for Windy Waters 4 from 2004 to 2020; is that correct? 5 A It shows stock transactions from an effective date 6 of 5/15/2004 to 5/13/2020, yes. 7 Q And to your knowledge is this information 8 accurate? 9 A In preparation for this, we also revisited this, 10 and I'd like to look at that -- 11 Q Please do. 12 A -- next to this. 13 Q Yeah. Please do. Is this a document you would 14 have prepared to assist you with recalling your 15 testimony today? 16 A In collaboration with counsel and Mike and Reed, 17 it is a document that we prepared, yes. 18 MR. CAMELI: All right. And is 19 this a previously marked -- 20 MS. WITTENBERG: It is not. It was 21 for a different topic, and I realize my notes 22 are in the other room, so I don't have it 23 physically with me. Do you want me to 24 briefly run over there and grab them? 25 MR. CAMELI: Sure. Yeah. We could</p>
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<p>1 2021. Did I read that correctly? 2 A You did. 3 Q And you are also prepared to testify about topic 4 10; is that correct? 5 A Correct. 6 Q And will you explain what documents or what 7 individuals you spoke with to prepare -- what 8 documents you reviewed or individuals you spoke 9 to to prepare for testifying on behalf of 10 Windy Waters about topic 10. 11 A I reviewed the stock activity for Class A and 12 Class B shares, and I had conversations with 13 counsel and Reed and Mike were also present. 14 Q Okay. So we're going to mark an exhibit here. 15 It will be number 7. Here you go. 16 (Exhibit No. 7 marked for 17 identification) 18 Q Okay. I'm showing you what's been marked as 19 Exhibit 7, and this is the declaration of 20 Mr. Kiesler used in support of his Motion for 21 Summary Judgment. Do you see that? 22 A I do. 23 Q Now, will you turn to page 4 and paragraph 35. 24 That begins at the bottom of the page, and it goes 25 in to the next page, page 5. Do you recognize</p>	<p>1 take a quick break, come off the record. 2 MS. WITTENBERG: It will take a 3 minute or less. 4 THE VIDEOGRAPHER: Going off the 5 record at 11:35. 6 (Recess) 7 THE VIDEOGRAPHER: We're back on 8 the record at 11:36. 9 MS. WITTENBERG: Do you want to 10 mark this right away? 11 MR. CAMELI: Yes, please. 12 MS. WITTENBERG: This is for a 13 different topic, but I know what he's talking 14 about. 15 (Exhibit No. 8 marked for 16 identification) 17 MR. CAMELI: So this will be 18 Exhibit 8, I believe. Do you have a -- 19 MS. WITTENBERG: It was in a 20 different order. 21 MR. CAMELI: That's okay. 22 Q So you have, I believe, what's been marked as 23 Exhibit 8. I believe you're referencing to 24 determine whether my question about the chart at 25 paragraph 35 of Mr. Kiesler's declaration is</p>

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<p>1 accurate.</p> <p>2 A Correct.</p> <p>3 Q Okay. And let me know when you're ready to answer</p> <p>4 that question.</p> <p>5 A Okay. I am just going to go. Gary, yes. Terry,</p> <p>6 yes. Tom, yes. Tom, yes. Mike, yes. Stacy,</p> <p>7 yes. Stewart, yes. Gary, yes. Michael, yes.</p> <p>8 Terry, yes. Stacy, yes.</p> <p>9 There was a miss in between Stacy Randall's</p> <p>10 effective date of 6/30/2007 and Reed Widen's</p> <p>11 effective date of 1/1/2008, and that miss was for</p> <p>12 Matthew Gonnering, which had an effective date of</p> <p>13 1/1/2008, and that was the subscription for 148.54</p> <p>14 shares at a price per share of \$337.61.</p> <p>15 Q Okay.</p> <p>16 A I'm continuing to check. Reed, Tom, Matthew.</p> <p>17 Q I'm sorry, Mr. Gonnering, I just want to make sure</p> <p>18 I got those two. It was Stacy Randall 6/30 of '07</p> <p>19 and yours of 1/1 of '08?</p> <p>20 A In between Stacy's of 6/30/07 and Reed's 1/1/08,</p> <p>21 in between that there is one.</p> <p>22 Q I see.</p> <p>23 A And that's the one I read off.</p> <p>24 Q And that's yours. All right. Thank you.</p> <p>25 A Okay. So let me go back then. Reed, Tom,</p>	<p>1 he is not prepared to testify to those topics</p> <p>2 today, beyond adopting the designations.</p> <p>3 And I just want to make sure that that</p> <p>4 means that you would not permit him to</p> <p>5 testify should I ask him questions about</p> <p>6 those topics; is that correct?</p> <p>7 MS. WITTENBERG: We have not</p> <p>8 prepared him, so we would be telling him that</p> <p>9 we have designated testimony, and he should</p> <p>10 not answer those questions, yes.</p> <p>11 MR. CAMELI: Okay. Thank you.</p> <p>12 MS. WITTENBERG: Are you done,</p> <p>13 Matt?</p> <p>14 THE WITNESS: I am.</p> <p>15 MS. WITTENBERG: He's done.</p> <p>16 MR. CAMELI: You are?</p> <p>17 THE WITNESS: Yep.</p> <p>18 MR. CAMELI: Great. Thank you.</p> <p>19 BY MR. CAMELI:</p> <p>20 Q So I just want to come back then to Exhibit 7 and</p> <p>21 just want to now ask the question, to your</p> <p>22 knowledge is the information on the chart that</p> <p>23 appears at page 5, paragraph -- excuse me, it's</p> <p>24 page 4 to page 5, paragraph 35 of Exhibit 7, is</p> <p>25 that true and correct with the exception of the</p>
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<p>1 Matthew, Stacy, Terry, Brian, Gary, Matthew, Mike,</p> <p>2 Reed, Stacy, Price, Brian, Terry, Stacy, Stacy,</p> <p>3 Reed Trust, Stacy.</p> <p>4 So I've verified the names that are listed</p> <p>5 there, and I did not look at the effective dates,</p> <p>6 but I did insert that one missing line.</p> <p>7 Q Okay.</p> <p>8 A Would you like me to go through effective dates,</p> <p>9 subscription/redemption, number of shares, and</p> <p>10 price per share to validate that right now?</p> <p>11 Q Yes. I just want to make sure that what</p> <p>12 Mr. Kiesler's -- I would like to know what, in</p> <p>13 any way, Mr. Kiesler's declaration might be not</p> <p>14 entirely accurate.</p> <p>15 A Okay. So I'm going to go back through. 5/14/04</p> <p>16 subscription 285.68, \$350.04. Gary's line is</p> <p>17 correct.</p> <p>18 MS. WITTENBERG: To save the court</p> <p>19 reporter a little bit of typing, you don't</p> <p>20 necessarily have to say those out loud.</p> <p>21 A Don't say them, okay. Terry's is correct.</p> <p>22 MR. CAMELI: Counsel, while the</p> <p>23 witness is looking at that and to make sure</p> <p>24 my record is clear with respect to designated</p> <p>25 topics 19 and 20, I know you mentioned that</p>	<p>1 one transaction that you noted earlier of your own</p> <p>2 on January 1 of 2008?</p> <p>3 A It is.</p> <p>4 Q So now I'd like you to turn to what we're going to</p> <p>5 mark as Exhibit 9.</p> <p>6 (Exhibit No. 9 marked for</p> <p>7 identification)</p> <p>8 Q Exhibit 9 are the Proposed Findings of Fact and</p> <p>9 Conclusions of Law that accompanied the</p> <p>10 Defendants' Motion for Summary Judgment and is</p> <p>11 found at Docket 76 in the court record.</p> <p>12 And do you see that?</p> <p>13 A I see it.</p> <p>14 Q Will you turn to page 14, and go to paragraph 82.</p> <p>15 A Yes.</p> <p>16 Q And does this appear to be the same chart as</p> <p>17 appears in Mr. Kiesler's declaration?</p> <p>18 A It appears to be, without a detailed review, but</p> <p>19 it appears to be.</p> <p>20 Q And if it is identical to what is in Mr. Kiesler's</p> <p>21 declaration, would your testimony be the same</p> <p>22 regarding this chart's version as it was in the</p> <p>23 previous question concerning Exhibit 7?</p> <p>24 A It is.</p> <p>25 Q Good. So this appears to be true and correct,</p>

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<p>1 except for the entry of your subscription of</p> <p>2 January 1 of 2008? Again, that presumes that it</p> <p>3 is the identical document that you reviewed in 7,</p> <p>4 Exhibit 7.</p> <p>5 A Correct.</p> <p>6 Q All right. So now I'm going to -- we're going to</p> <p>7 go to another exhibit, Exhibit 9. I'm sorry,</p> <p>8 Exhibit 10.</p> <p>9 (Exhibit No. 10 marked for</p> <p>10 identification)</p> <p>11 Q And do you recognize Exhibit 10 as Windy Waters'</p> <p>12 Class B stock register?</p> <p>13 A I have two copies. I recognize the exhibit as</p> <p>14 Windy Waters' Class B stock register, yes.</p> <p>15 Q All right. And there are two pages. They're</p> <p>16 marked Windy 35810 and 35811; correct? Lower</p> <p>17 right corner.</p> <p>18 A Correct. Yep.</p> <p>19 Q Yeah. And to your knowledge is this information</p> <p>20 accurate as produced by Windy Waters?</p> <p>21 A To my knowledge.</p> <p>22 Q And it purports to show all of the subscriptions</p> <p>23 and redemptions, again, of stock at Windy Waters</p> <p>24 between 2004 and 2020; right?</p> <p>25 A For Class B shares.</p>	<p>1 MR. CAMELI: Yeah. So I'm asking</p> <p>2 related questions. Okay? So 4 and 10, 4 and</p> <p>3 10 were about ownership, past and present.</p> <p>4 10 was about all stock transactions, and 9 is</p> <p>5 the formula and the fair market value per</p> <p>6 share formula, which in our view would permit</p> <p>7 us to ask the question I just asked.</p> <p>8 MS. WITTENBERG: Okay. I disagree</p> <p>9 that that's within the scope of topics -- of</p> <p>10 the topics that are listed here, an opinion</p> <p>11 on whether a share was fair market value or</p> <p>12 not.</p> <p>13 MR. CAMELI: Okay.</p> <p>14 Q Can you answer the question, Mr. Gonnering?</p> <p>15 MS. WITTENBERG: Separately,</p> <p>16 outside of that, I would object, if you are</p> <p>17 going to ask him individually, that it calls</p> <p>18 for an expert opinion.</p> <p>19 Q Okay. So to repeat my question, as to Exhibit 10,</p> <p>20 which of the transactions listed took place at</p> <p>21 fair market value?</p> <p>22 A In preparation for this, I have prepared to talk</p> <p>23 about the development and implementation and use</p> <p>24 of the per share formula that was adopted as the</p> <p>25 second amendment and expected that line of</p>
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<p>1 Q For Class B shares, that's right. Okay.</p> <p>2 So staying focused on Exhibit 10 for a second</p> <p>3 here, the Class B stock register, which of these</p> <p>4 transactions do you believe took place at fair</p> <p>5 market value?</p> <p>6 MS. WITTENBERG: I'm going to</p> <p>7 object. This is outside the scope of any of</p> <p>8 the topics that I can think of. I can't see</p> <p>9 where this comes into play.</p> <p>10 MR. CAMELI: So, let me see. We're</p> <p>11 at item 9, the development, implementation,</p> <p>12 and use of the fair market value per share</p> <p>13 formula described in the May 7, 2007, second</p> <p>14 amendment to shareholder agreement. So we do</p> <p>15 believe that questions concerning fair market</p> <p>16 value are part of -- part and parcel of these</p> <p>17 inquiries.</p> <p>18 So can the witness answer unless</p> <p>19 directed otherwise by counsel?</p> <p>20 MS. WITTENBERG: So hold on,</p> <p>21 though. You're saying topic 9, which is use</p> <p>22 of the fair market value per share formula</p> <p>23 described in the amendment. Was your</p> <p>24 question asking if the formula was used?</p> <p>25 That he can answer and is prepared to answer.</p>	<p>1 questioning.</p> <p>2 Q So let's go there. Which took place -- which one</p> <p>3 of these transactions took place using the fair</p> <p>4 market value per share formula from the</p> <p>5 Windy Waters shareholder agreement?</p> <p>6 A If we go to Exhibit 8, you will see the table</p> <p>7 provided at the bottom of page 1, page 2, the top</p> <p>8 half of page 3.</p> <p>9 Q Yes, sir. I see that.</p> <p>10 A These were -- The stock price formula is</p> <p>11 calculated based on what is a per share formula</p> <p>12 that was adopted in 2007 that was created based</p> <p>13 on a 2004 report, and that formula in 2007 was</p> <p>14 adopted as a second amendment to the shareholder</p> <p>15 agreement, which is a multiple EBITDA, weighted</p> <p>16 EBITDA formula, and that was used for these</p> <p>17 transactions.</p> <p>18 Q Even that formula -- are you saying the formula</p> <p>19 was used even for transactions preceding 2007?</p> <p>20 A The formula was used for transactions preceding</p> <p>21 2007, specifically as early as 2004.</p> <p>22 Q Even though the formula wasn't developed until</p> <p>23 2007?</p> <p>24 A The formula was developed before 2007. It was</p> <p>25 developed based on a report that was generated in</p>

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<p>1 2004 by an advisor for Virchow Krause at the time, 2 now Baker Tilly. His name was Bruce Hutler. He 3 developed a report that was used, and that report 4 was then used to create the formula that was used 5 in 2004 for 2004 transactions, also by a 6 representative of Baker Tilly, Virchow Krause at 7 the time, named Brad DeNoyer, and applied to those 8 transactions. 9 Q All right. Let's go to -- I want to move away 10 from this topic for just a second, and I want to 11 move over to topic 6. And, again, we'll look at 12 our Notice of Deposition, and topic 6 is for 13 financial information, valuations, estimates of 14 value, and appraisals of Windy Waters from 2004 15 through 2007 and 2015 through 2020. Did I read 16 that correctly? 17 A You did. 18 Q Okay. And you're prepared to testify about that 19 topic here? 20 A I am. 21 Q And what documents did you review and what people 22 did you speak with to assist you in your 23 preparation? 24 A The people I spoke with were counsel. Inclusive 25 in that conversation was Reed and Mike. I</p>	<p>1 valuations of Windy Waters or its stock between 2 2004 and 2007? 3 A In 2004, there was a valuation done. 4 Q And was that after Mark Widen's death? 5 A That was in 2004, and Mark Widen's death was in 6 2003. So, yes, that would have been after. 7 Q It was done after. So now we're going to show you 8 an exhibit which we're going to mark as Exhibit 12. 9 (Exhibit No. 12 marked for 10 identification) 11 Q Have you seen this before? 12 A I don't know by just glancing at it. This appears 13 to be the Hutler report. 14 Q Yeah. This is the 2004 Bruce Hutler appraisal 15 report; is that correct? 16 A That's correct. 17 Q And this appraisal states that appraiser's 18 opinions of the fair market value of the companies 19 as of the date of the appraisal; right? 20 A Can you point me to if you're reading something? 21 Q Yeah. So look at page 1, the third paragraph. 22 Just read that over. 23 A I read the first sentence. 24 Q Okay. And so you'll agree that it states, this 25 appraisal states that the appraiser's opinion of</p>
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<p>1 reviewed and we collectively reviewed financial 2 information with respect to income statements, 3 balance sheets. We reviewed the valuations from 4 the experts that we used during those time 5 periods, and that is what I did to prepare for 6 this one. 7 Q Very good. Were there any valuations between 2004 8 and 2007 of Windy Waters' stock? 9 MS. WITTENBERG: I'm just going 10 to -- Mark, I'm handing him some notes that 11 may help him here, and I'll give you a copy 12 momentarily. 13 MR. CAMELI: Thank you. 14 THE WITNESS: Do you want her -- 15 MR. CAMELI: Yes, please. Have 16 that marked. 17 (Exhibit No. 11 marked for 18 identification) 19 Q So you're looking now at what's been marked as 20 Exhibit 11, and these are notes that reflect your 21 preparation for topic 6; is that right? 22 A The collective preparation of the -- 23 Q The collective preparation? 24 A Yep. 25 Q So my question to you was were there any</p>	<p>1 fair market value of the company is as of the 2 date of the appraisal. Well, actually it's as of 3 April 30, 2004; correct? 4 A Correct. 5 Q And by fair market value, the appraisal means -- 6 I want you to go to the next paragraph also on 7 page 1 where it says, "Fair market value is 8 defined in the International Glossary of Business 9 Valuation Terms." 10 And then it goes on to say that it's the 11 price, expressed in terms of cash equivalents, at 12 which property would change hands -- it's the same 13 thing -- between a hypothetical willing and able 14 buyer and a hypothetical willing and able seller, 15 acting at arm's length in an open and unrestricted 16 market, when neither is under compulsion to buy or 17 sell and when both have reasonable knowledge of 18 the relevant facts. 19 Did I read that correctly? 20 A You did. 21 Q So now what I would like you to do is -- oh. 22 In this context, the property being appraised is 23 the 100 percent equity value of Windy Waters, 24 Incorporated; isn't that true? 25 A The 100 percent of the equity in Windy Waters as</p>

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<p>1 of April 30, 2004, yes.</p> <p>2 Q Thank you. So now turning to page 7 of this</p> <p>3 same document, in the first paragraph, I believe</p> <p>4 the end of the sentence of that paragraph says,</p> <p>5 "It is our opinion that the fair market value of</p> <p>6 a marketable majority interest in 100 percent of</p> <p>7 the equity of the company was \$7,441,000 as of</p> <p>8 April 30, 2004."</p> <p>9 Did I read that correctly?</p> <p>10 A You did.</p> <p>11 Q Would you agree that the fair market value of the</p> <p>12 company increased then between 2004 and 2020?</p> <p>13 MS. WITTENBERG: Objection. Calls</p> <p>14 for expert opinion, but go ahead and answer</p> <p>15 if you can.</p> <p>16 A It would depend on the formula.</p> <p>17 Q So right now we're talking about fair market value</p> <p>18 as that was defined, as we just read it on page 1</p> <p>19 of that document, of the appraisal, and I'm just</p> <p>20 asking if you believe that the fair market value</p> <p>21 of the company increased between 2004 and 2020.</p> <p>22 MS. WITTENBERG: Same objection.</p> <p>23 Answer if you can.</p> <p>24 A The fair market value formula that was assembled</p> <p>25 would be used to determine what changes would</p>	<p>1 A That was based on assumptions of what I gathered</p> <p>2 based on publicly available information. That</p> <p>3 would not have been an expert opinion such as this</p> <p>4 2004 Bruce Hutler expert opinion on valuation.</p> <p>5 Q So I want to come back to then my question of</p> <p>6 would you agree that the fair market value of the</p> <p>7 company increased between 2004 and 2020?</p> <p>8 MS. WITTENBERG: Same objection.</p> <p>9 Calls for a legal conclusion. If you can</p> <p>10 answer, go ahead.</p> <p>11 A I would agree that it changed based on the inputs</p> <p>12 to the formula.</p> <p>13 Q You would agree that Widen Enterprises is one of</p> <p>14 Windy Waters' assets; correct?</p> <p>15 A Widen Enterprises is one of Windy Waters' assets,</p> <p>16 yes.</p> <p>17 Q And the other being the marketable securities that</p> <p>18 we talked about; correct?</p> <p>19 A Correct.</p> <p>20 Q None other than those two; correct?</p> <p>21 A Correct.</p> <p>22 Q So the health of Widen Enterprises would</p> <p>23 necessarily be an indicator of the health of</p> <p>24 Windy Waters?</p> <p>25 A One of them, yes.</p>
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<p>1 occur from that point in time.</p> <p>2 Q But isn't it -- so, first of all, let me just say</p> <p>3 this. Windy Waters was, of course, the sole</p> <p>4 shareholder of Widen Enterprises, right, at this</p> <p>5 time?</p> <p>6 A Correct.</p> <p>7 Q All right. So during that period of 2004 to 2020,</p> <p>8 you authored some documents about your views on</p> <p>9 the value of the company, didn't you?</p> <p>10 A I authored operational updates as Matthew</p> <p>11 Gonnering to Reed about other activity in the</p> <p>12 industry.</p> <p>13 Q And from that, you expressed views on the value of</p> <p>14 Widen Enterprises, again, between this 2004 and</p> <p>15 2020; correct?</p> <p>16 A Of Widen Enterprises?</p> <p>17 Q Uh-huh.</p> <p>18 A I looked at other transactions in the market for</p> <p>19 other organizations and made some assumptions and</p> <p>20 then applied those assumptions to Widen Enterprises'</p> <p>21 numbers, and that was part of those operational</p> <p>22 updates.</p> <p>23 Q And when you did that, the value of the company as</p> <p>24 you determined with that market research was far</p> <p>25 in excess at times of \$7.441 million; right?</p>	<p>1 Q The marketable securities being the other?</p> <p>2 A Correct.</p> <p>3 Q Do you recall why this valuation marked as</p> <p>4 Exhibit 12, do you recall why that was</p> <p>5 commissioned?</p> <p>6 A If I go back to the first page of Exhibit 12 and</p> <p>7 the second paragraph, it references the death of</p> <p>8 Mark Widen, and it says, "This letter serves as an</p> <p>9 update to our complete valuation report presenting</p> <p>10 our opinion as to the fair market value of the</p> <p>11 common stock of Windy Waters as of July 6, 2003,</p> <p>12 the date of Mr. Mark A. Widen's death, dated</p> <p>13 December 8, 2003. This letter should not be</p> <p>14 construed as a complete valuation report in and of</p> <p>15 itself. Rather, it should be interpreted as means</p> <p>16 of communicating our updated valuation conclusions</p> <p>17 within the context of our complete valuation</p> <p>18 report dated December 3, 2003."</p> <p>19 So I read that, and I think the death of</p> <p>20 Mark Widen was what prompted this.</p> <p>21 Q Was Stacy provided a copy of this valuation report?</p> <p>22 A Shareholders at the time likely would have been</p> <p>23 provided this report.</p> <p>24 Q So is the answer yes, that she was provided this?</p> <p>25 A The answer is she was likely provided this, and</p>

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<p style="text-align: right;">Page 105</p> <p>1 there is no reason to believe that this was 2 withheld from her for any reason. 3 Q When would that have occurred and who would have 4 provided it to her? 5 A This is addressed to Reed, and it would have 6 occurred sometime after the date of this or 7 perhaps the day of. So this is dated July 22, 8 2004, so at some point on that day or after Reed 9 would have shared it with her. 10 Q How would Reed have shared that with her? Would 11 it have been through a transmitted email? 12 Something put in the U.S. mail? Handed it to her 13 in person? How did he do that? 14 A I do not have recollection of how that would have 15 been transmitted to her. 16 Q Did he tell you that he did that at any time? 17 A There is not a recollection of that. 18 Q Why were there no valuations or appraisals done 19 after this one? 20 MS. WITTENBERG: Objection. 21 Assumes facts not in evidence. 22 Q Can you answer that or am I -- I guess I am 23 assuming facts that are not in evidence. 24 Was there ever a valuation or appraisal done 25 after this one?</p>	<p style="text-align: right;">Page 107</p> <p>1 Q Nothing in 2015 or '16; is that correct? 2 A That is correct. 3 Q Okay. Now let's turn to 2017, then. What was the 4 value determined at that time by experts? 5 A I'll point you to Exhibit 11. At the bottom of 6 the page, you see Baker Tilly's assessment as of 7 those four dates. 8 Q So does the bottom of page 11 purport to show 9 under all Windy Waters' shares the appraised value 10 of the company for years '17, '18, '19, and '20? 11 A It does. 12 Q Okay. And so that then would suggest that the 13 value declined from the 7.441 of 2004? 14 A Correct. 15 Q And did the value of Widen Enterprises decline 16 commensurately? 17 A The value of Windy Waters would be inclusive of 18 the value of Widen Enterprises. 19 Q So that would -- to answer the question, then, the 20 value of Widen Enterprises would have declined 21 commensurate with the value set forth in 22 Exhibit 11? 23 MS. WITTENBERG: Objection. Calls 24 for an expert opinion. Go ahead and answer 25 to the extent you can.</p>
<p style="text-align: right;">Page 106</p> <p>1 A There was. 2 Q And when was that? 3 A 2017, 2018, 2019, 2020. 4 Q And who did those? 5 A Baker Tilly. 6 Q And did they prepare a similar valuation report as 7 the one that is marked here as Exhibit 12? 8 A They prepared a report, yes. 9 Q And was that produced to the plaintiff in 10 connection with this litigation? 11 A It was produced to counsel. 12 Q Okay. Did Windy Waters estimate its own value at 13 any point after 2004? 14 A As with the case in 2004, Windy Waters used 15 experts for valuations, and we would not have been 16 experts. 17 Q What was the fair market value, based on what 18 those experts provided to you in 2015? 19 A It was not an expert opinion in 2015. 20 Q So was there anything? Was there an appraised 21 value conducted by experts in 2015? 22 A There was -- was there an appraised value 23 conducted by experts in 2015? There was an 24 appraised value conducted by experts in 2004, 25 2017, 2018, 2019, and 2020.</p>	<p style="text-align: right;">Page 108</p> <p>1 A I would restate that the value of Windy Waters 2 would be inclusive of the value of Widen 3 Enterprises. 4 Q So is the answer yes, then, to my question? 5 A The answer is maybe. 6 Q Okay. Under what circumstance could the value of 7 Windy Waters go down except as it concerns the 8 possibility of marketable securities devaluing? 9 Other than that, under what circumstance can the 10 value of Windy Waters go down and the value of 11 Widen Enterprises not go down really equally if we 12 were to take the marketable securities out of the 13 equation? 14 A You referenced marketable securities, which was on 15 my mind as I think about this, which is I don't 16 know how each played with each other to this. So 17 that is what I do not know. I have not looked at 18 that. But I would just restate that Windy Waters' 19 valuation here is inclusive of the Widen 20 Enterprises and the marketable securities at that 21 time. 22 Q I see. So it is conceivable that the reason that 23 the Windy Waters value is where it is is because 24 the marketable securities that it held 25 substantially decreased in value? Is that what</p>

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<p>1 your testimony is?</p> <p>2 A My testimony is I didn't look at that level</p> <p>3 of detail in response or preparation for this.</p> <p>4 I prepared what's been provided as Exhibit 11.</p> <p>5 Q If you assume that the value of Widen Enterprises</p> <p>6 only increased from 2004 to 2020, how would it be</p> <p>7 possible for the value of Windy Waters to go down</p> <p>8 in that same time?</p> <p>9 A The other asset would have to have gone down.</p> <p>10 Q And your testimony here today is that you don't</p> <p>11 know whether that occurred or not because that was</p> <p>12 not part of how you prepared for this testimony?</p> <p>13 A Correct.</p> <p>14 Q Okay. So I want to come back to this notion of</p> <p>15 whether these appraisals from '17, '18, '19, and</p> <p>16 '20 were actually produced to the plaintiff in the</p> <p>17 course of this litigation. Do you know?</p> <p>18 A They were produced to counsel.</p> <p>19 MR. CAMELI: And can counsel tell</p> <p>20 me whether they were produced to us?</p> <p>21 MS. WITTENBERG: I'm quite</p> <p>22 confident they were. I couldn't tell you</p> <p>23 what Bates number or anything, but yes.</p> <p>24 MR. CAMELI: Okay. So what we</p> <p>25 might do is I know I talked about going until</p>	<p>1 and that would be the stock formula price that was</p> <p>2 used for the other transactions that stemmed from</p> <p>3 the Bruce Hutler report that was the second</p> <p>4 amendment to the shareholder agreement consistent</p> <p>5 with the shareholders, which is the weighted</p> <p>6 EBITDA formula that was, yeah, derived by</p> <p>7 Baker Tilly.</p> <p>8 Q And then if we go into June 30 of 2007 and her</p> <p>9 redemption, what formula is used there?</p> <p>10 A June 30 of 2007, also on this Exhibit 8, which is</p> <p>11 citing the use of that same formula that I just</p> <p>12 referenced.</p> <p>13 Q Okay. And then going into, I believe, the next is</p> <p>14 January 18 of 2011.</p> <p>15 A January 18, 2011, I see it, and consistent with</p> <p>16 the previous references, the same formula.</p> <p>17 Q And was that the same formula used then to redeem</p> <p>18 all of her shares subsequent to that?</p> <p>19 A That was the formula. So if we could get</p> <p>20 specific, we could go to --</p> <p>21 Q Yeah. I just want to know if it's the same</p> <p>22 formula used to redeem all of her shares</p> <p>23 subsequent to that.</p> <p>24 A I would note that subsequent to her January 18,</p> <p>25 2011, redemption, she had three additional</p>
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<p>1 12:30. It's about 12:22. Why don't we take</p> <p>2 a break right now --</p> <p>3 MS. WITTENBERG: Sure.</p> <p>4 MR. CAMELI: -- and then maybe</p> <p>5 reassemble at 1:00. Does that sound great?</p> <p>6 MS. WITTENBERG: Yes. Thank you.</p> <p>7 THE VIDEOGRAPHER: Going off the</p> <p>8 record at 12:23.</p> <p>9 (Lunch recess)</p> <p>10 THE VIDEOGRAPHER: We are back on</p> <p>11 the record at 1:08.</p> <p>12 BY MR. CAMELI:</p> <p>13 Q All right. Mr. Gonnering, I want to go back to</p> <p>14 the issue of this formula, and what formula was</p> <p>15 used to redeem Stacy Randall's shares in June --</p> <p>16 on June 30 of 2005?</p> <p>17 A On June 30, 2005. So the -- I'm thinking about my</p> <p>18 exhibits here. There was an exhibit where we</p> <p>19 listed transactions using the formula. I'm</p> <p>20 looking at Exhibit 8.</p> <p>21 Q Exhibit 8.</p> <p>22 A And I understand the question to be 2005 for Stacy</p> <p>23 Randall redemption?</p> <p>24 Q Correct.</p> <p>25 A I have an effective date of 6/30 of 611.88 shares,</p>	<p>1 redemptions, and those -- sorry. That's not true.</p> <p>2 One was a subscription, two were redemptions.</p> <p>3 So the redemptions were in 2017 and 2019 and</p> <p>4 her 2020 redemption, so it is three, that those</p> <p>5 used the formula, as well, that same formula, yes.</p> <p>6 Q Was the formula ever changed from that 2005</p> <p>7 redemption forward?</p> <p>8 A Was the formula ever changed? For her? Or can</p> <p>9 you specify?</p> <p>10 Q Yeah. Sure. With respect to the redemption of</p> <p>11 her shares going from 2005 forward, you kept</p> <p>12 referencing it with respect to the one developed</p> <p>13 by Bruce Hutler.</p> <p>14 A Yep.</p> <p>15 Q And my question is was it ever changed at all?</p> <p>16 A The formula was not changed, but there was -- we</p> <p>17 introduced a -- in 2013, that same Baker Tilly</p> <p>18 advisor, Bruce Hutler, had -- based on his expert</p> <p>19 opinion, had offered that we start to evaluate the</p> <p>20 net assets alongside that formula and provide any</p> <p>21 transaction favorability to the higher of the two.</p> <p>22 So in Stacy's redemptions following the</p> <p>23 consideration for net assets, she would have been</p> <p>24 provided the higher of the two. And for Stacy's</p> <p>25 shares, the higher of the two was the formula.</p>

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<p>1 Q You're referencing a recommendation from</p> <p>2 Mr. Hutler. Was that produced to us, that</p> <p>3 you know of?</p> <p>4 A Everything was provided to counsel.</p> <p>5 MR. CAMELI: Okay. Do you --</p> <p>6 MS. WITTENBERG: I believe it was,</p> <p>7 yes.</p> <p>8 MR. CAMELI: Okay.</p> <p>9 Q I want to go to topic 21. And, again, let's go to</p> <p>10 Exhibit 1 and go to what's been identified as 21.</p> <p>11 It reads, "Windy Waters' relationship to Widen</p> <p>12 Enterprises, including the nature and tracking of</p> <p>13 financial transactions between or involving Widen</p> <p>14 Enterprises and Windy Waters from 2015 through</p> <p>15 2021."</p> <p>16 Did I read that correctly?</p> <p>17 A You did.</p> <p>18 Q Are you prepared to testify as to that item as</p> <p>19 well?</p> <p>20 A I am.</p> <p>21 Q And what documents did you review and who did you</p> <p>22 speak to with respect to that to prepare?</p> <p>23 A I spoke to counsel and also present with counsel</p> <p>24 was Reed and Mike, and we reviewed the accounts</p> <p>25 where there were the tracking of these financial</p>	<p>1 space.</p> <p>2 A Yep.</p> <p>3 Q And then I asked about personnel.</p> <p>4 A Yep.</p> <p>5 Q I think what you're saying is they had the same</p> <p>6 personnel, but some of the personnel had different</p> <p>7 roles in each of those companies, is that what I'm</p> <p>8 hearing?</p> <p>9 A Correct.</p> <p>10 Q Okay. And I think I asked you this earlier.</p> <p>11 Did they share the same computer systems?</p> <p>12 A Yeah. That was my response earlier, consistent</p> <p>13 with this, which is I did not expect that line of</p> <p>14 questioning or I didn't prepare that level of</p> <p>15 detail in response to that.</p> <p>16 Q Earlier it might have been about who paid for it.</p> <p>17 A Yeah.</p> <p>18 Q This is just are they selling -- or, excuse me,</p> <p>19 are they sharing the same actual physical hardware</p> <p>20 computers? That's what I wanted to know.</p> <p>21 A Sure.</p> <p>22 Q Do you know the answer to that?</p> <p>23 A And the answer to that is yes. Mike Kiesler used</p> <p>24 the same equipment for that, yes.</p> <p>25 Q And what about Reed?</p>
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<p>1 transactions.</p> <p>2 Q So we talked a little bit about the relationship</p> <p>3 between Widen Enterprises and Windy Waters on a</p> <p>4 day-to-day basis, and I want to just explore that</p> <p>5 a little bit more.</p> <p>6 They did share office space between each</p> <p>7 other; isn't that correct?</p> <p>8 A They did because of the people that were involved.</p> <p>9 Q Were the same?</p> <p>10 A Yes.</p> <p>11 Q Yeah. That was going to be my next question. It</p> <p>12 was the same personnel between the two; right?</p> <p>13 A Their roles may have been different, so I would</p> <p>14 want to reference the -- well, the role of Mike</p> <p>15 Kiesler as we had previously talked about in his</p> <p>16 role is his capacity as secretary and treasurer</p> <p>17 remained the same, and so -- okay. I'm sorry.</p> <p>18 Can you repeat that?</p> <p>19 Q Sure. Again, we're trying to just compare and</p> <p>20 contrast, if you will --</p> <p>21 A Yes.</p> <p>22 Q -- the Widen Enterprises relationship with</p> <p>23 Windy Waters.</p> <p>24 A Yep.</p> <p>25 Q We're talking about them sharing the same office</p>	<p>1 A Reed would have used the same equipment, yes.</p> <p>2 Q And what about any other shareholders of</p> <p>3 Windy Waters and Widen, either shareholders or</p> <p>4 staff, same equipment, I presume as well, shared</p> <p>5 between them?</p> <p>6 A To my knowledge.</p> <p>7 Q I'm sorry?</p> <p>8 A To my knowledge.</p> <p>9 Q To your knowledge yes?</p> <p>10 A To my knowledge, yes.</p> <p>11 Q Okay. And then how about the email accounts, did</p> <p>12 they share the same email accounts?</p> <p>13 A Specifically like Mike would have had an email</p> <p>14 account for at Widen.com, and he would have used</p> <p>15 that email account for Windy Waters-related</p> <p>16 matters. Reed is the same.</p> <p>17 Q Okay. Is there anyone that was different? Did</p> <p>18 anyone have a Windy Waters email account?</p> <p>19 A Not to my knowledge, no.</p> <p>20 Q Okay. Did Windy Waters ever transfer funds to</p> <p>21 Widen Enterprises?</p> <p>22 A It did.</p> <p>23 MS. WITTENBERG: I'm handing him</p> <p>24 some notes here. I'll give you a copy.</p> <p>25 MR. CAMELI: Okay. Let's mark</p>

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<p>1 that, then, as?</p> <p>2 COURT REPORTER: 13.</p> <p>3 (Exhibit No. 13 marked for</p> <p>4 identification)</p> <p>5 Q So you have in front of you what has been marked</p> <p>6 as Exhibit 13, and I believe this purports to be</p> <p>7 notes that you have prepared with others on the</p> <p>8 topic -- Topic 21; is that correct?</p> <p>9 A That is correct.</p> <p>10 Q And you are now reviewing that to assist you in</p> <p>11 answering the question that I just asked about the</p> <p>12 transfer of funds between Windy Waters and Widen</p> <p>13 Enterprises.</p> <p>14 A Correct. And the last paragraph of Exhibit 13</p> <p>15 states those transfers. Windy Waters transferred</p> <p>16 money on several occasions to Windy Waters (sic).</p> <p>17 December of 2015, August of 2017, November of</p> <p>18 2018, August of 2020, September of 2020, October</p> <p>19 of 2020.</p> <p>20 Q And what about Widen transferring to Windy Waters?</p> <p>21 A Yes.</p> <p>22 Q And when did that occur?</p> <p>23 A That occurred on several occasions. I did not</p> <p>24 prepare the details related to those transactions.</p> <p>25 But those would have occurred for tax payments and</p>	<p>1 needed at the Widen level, so if it was no longer</p> <p>2 needed at the Widen level, the strategic reason</p> <p>3 for keeping it at the Widen level, it was not</p> <p>4 strategic, so to be more strategic was to move it</p> <p>5 to Windy Waters to be more strategic.</p> <p>6 Q Yeah. I'm just trying to identify what those</p> <p>7 strategies are. Is one of them to add a layer of</p> <p>8 protection for liability purposes? In other</p> <p>9 words, not let the Widen Enterprises cash be</p> <p>10 accessible to, I'll say, a creditor or things of</p> <p>11 this sort?</p> <p>12 MS. WITTENBERG: And I'll object</p> <p>13 the question calls for a legal conclusion,</p> <p>14 but go ahead and answer if you can.</p> <p>15 A My understanding is the primary was that it was</p> <p>16 not needed at the Widen Enterprises level, and</p> <p>17 therefore, we could put it to work at the</p> <p>18 Windy Waters level.</p> <p>19 Q And when you say that, you mean mostly in the</p> <p>20 context of purchasing marketable securities?</p> <p>21 A That would be, yes, for the investments that</p> <p>22 Windy Waters would make elsewhere.</p> <p>23 Q Were there investments beyond marketable</p> <p>24 securities?</p> <p>25 A Not to my knowledge.</p>
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<p>1 other distributions.</p> <p>2 Q Would it have been possible for Widen Enterprises</p> <p>3 to transfer money to Windy Waters if Windy Waters</p> <p>4 ever needed the cash?</p> <p>5 A Widen Enterprises did transfer money to Windy</p> <p>6 Waters.</p> <p>7 Q And for what reason?</p> <p>8 A Reasons of tax payments or distributions or when</p> <p>9 Widen Enterprises would have cash that would be</p> <p>10 deemed excess.</p> <p>11 Q So what was the reason for transferring excess</p> <p>12 cash from Widen to Windy Waters?</p> <p>13 A To move it out of Widen Enterprises.</p> <p>14 Q But why would you want to move it out of there?</p> <p>15 A To put it into the holding company.</p> <p>16 Q Why put it with the holding company?</p> <p>17 A To put it under a different corporate entity.</p> <p>18 Q And was there a strategic reason for using a</p> <p>19 different corporate entity?</p> <p>20 A As the holding company, they would then apply that</p> <p>21 to other investments, which were these marketable</p> <p>22 securities.</p> <p>23 Q Were there other reasons, such as, you know,</p> <p>24 liability shielding or anything of this sort?</p> <p>25 A The excess cash was -- when it was no longer</p>	<p>1 Q Did Widen Enterprises pay expenses on behalf of</p> <p>2 Windy Waters?</p> <p>3 A It did.</p> <p>4 Q What was the nature of those expenses?</p> <p>5 A Some of those expenses, as I'll point you to</p> <p>6 Exhibit 13, the middle of the second paragraph,</p> <p>7 Stacy Randall redeemed all of her shares and</p> <p>8 payments were made pursuant to the note by Widen</p> <p>9 Enterprises on behalf of Windy Waters. So that</p> <p>10 was an example. And then we tracked those in an</p> <p>11 intercompany account.</p> <p>12 Q Was there any reason that Windy Waters had</p> <p>13 marketable securities?</p> <p>14 A Investment reasons.</p> <p>15 Q That's it? Just as a means of trying to grow</p> <p>16 those funds?</p> <p>17 A Yeah.</p> <p>18 Q And were there other expenses other than those</p> <p>19 delineated in Exhibit 13 where Widen was paid</p> <p>20 expenses on behalf of Windy Waters?</p> <p>21 A There was two examples shared here. One is the</p> <p>22 one that I previously shared, and the other is</p> <p>23 Price Widen's example, as well, and there were</p> <p>24 other transactions that I -- yeah, that were</p> <p>25 tracked in the intercompany report so this is not</p>

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<p>1 comprehensive.</p> <p>2 Q And I assume there was a ledger of some sort that</p> <p>3 kept track of these transfers?</p> <p>4 A There was.</p> <p>5 Q And where can that ledger be found?</p> <p>6 A It was provided to counsel.</p> <p>7 MR. CAMELI: And counsel then would</p> <p>8 have provided that to us?</p> <p>9 MS. WITTENBERG: I would assume. I</p> <p>10 don't know about that document specifically.</p> <p>11 MR. CAMELI: Okay.</p> <p>12 Q Who at Widen Enterprises maintained the</p> <p>13 intercompany account ledger?</p> <p>14 A Mike Kiesler.</p> <p>15 Q And who at Windy Waters maintained the</p> <p>16 intercompany account ledger?</p> <p>17 A The treasurer.</p> <p>18 Q Also Mike Kiesler?</p> <p>19 A Mike Kiesler.</p> <p>20 Q The same person?</p> <p>21 A Yes. CFO capacity with Widen and treasurer</p> <p>22 capacity with Windy Waters, yes.</p> <p>23 Q So it would be fair to say that Windy Waters had</p> <p>24 access to Widen Enterprises' funds as needed?</p> <p>25 A Windy Waters would have had access to Widen</p>	<p>1 So Windy Waters could have used Widen</p> <p>2 Enterprises money to buy back Stacy's shares in</p> <p>3 May of '20; isn't that correct?</p> <p>4 A Widen Enterprises would provide Windy Waters with</p> <p>5 cash for distributions, tax, or excess cash.</p> <p>6 Q And -- well, I'm now just going to read from your</p> <p>7 notes here. It says, "Stacy Randall -- after</p> <p>8 Stacy Randall redeemed all of her shares in May of</p> <p>9 2020, the payments that were made to her pursuant</p> <p>10 to promissory notes were paid by Widen Enterprises</p> <p>11 on behalf of Windy Waters." Right?</p> <p>12 A That's what that says.</p> <p>13 Q I read that correctly?</p> <p>14 A That's what that says, yep, and it was tracked in</p> <p>15 the intercompany accounts and it was done for</p> <p>16 convenience.</p> <p>17 Q Yeah. So in May of 2020, Windy Waters could have</p> <p>18 easily afforded to buy back her shares using Widen</p> <p>19 funds?</p> <p>20 A Repeat that question again.</p> <p>21 Q Sure. Will you repeat it?</p> <p>22 (Question read)</p> <p>23 A If Widen could provide the funds.</p> <p>24 Q Well, they did; right? They did under the terms</p> <p>25 of the promissory note, which was for far more</p>
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<p>1 Enterprises' funds as needed.</p> <p>2 Q Was it fair to say that, in your view? And if it</p> <p>3 isn't fair to say that, that's fine. Just tell</p> <p>4 me.</p> <p>5 A Widen Enterprises would receive -- well, let's</p> <p>6 see. Windy Waters would receive from Widen.</p> <p>7 Widen would receive from Windy Waters. So there</p> <p>8 was a bidirectional exchange there.</p> <p>9 So Windy Waters would have received funds</p> <p>10 from Widen in excess of cash in tax payments and</p> <p>11 distributions, so those were the reasons why Widen</p> <p>12 would be providing funds to Windy Waters.</p> <p>13 Windy Waters wouldn't otherwise go into Widen to</p> <p>14 access financials.</p> <p>15 Q Yeah. And I think what you're trying to say is it</p> <p>16 wouldn't be something that would be done just</p> <p>17 without reason. That if there was a reason, it</p> <p>18 would be done; right?</p> <p>19 A Correct.</p> <p>20 Q And they each had access to each other's assets as</p> <p>21 needed?</p> <p>22 A For specific reasons.</p> <p>23 Q For specific reasons, of course. All right. So</p> <p>24 what I would like to do is -- I'm sorry. I have</p> <p>25 one more question about this.</p>	<p>1 than the \$50,000 that she was asking for; right?</p> <p>2 A And tracked in accordance with the intercompany</p> <p>3 agreements to make sure that there was proper</p> <p>4 accounting of those.</p> <p>5 Q Yeah.</p> <p>6 A And Widen Enterprises at the time was not in a</p> <p>7 state where they could do that.</p> <p>8 Q They were not in a state to pay 50,000, but they</p> <p>9 were in a state to pay over a million dollars over</p> <p>10 time? Am I understanding you correctly?</p> <p>11 A The over time was an estimate that amounted to</p> <p>12 \$16,000 a month, and so the one-time of 50,000</p> <p>13 versus the 16,000 was considered, and the ability</p> <p>14 to afford 16,000 per month versus one-time amount</p> <p>15 of 50 were considered.</p> <p>16 Q Sure. That makes sense to me. But that could</p> <p>17 have also -- the 50 could have been paid at that</p> <p>18 same rate over about 90 days, a little more than</p> <p>19 90 days; isn't that true?</p> <p>20 A I didn't prepare that math for this or consider --</p> <p>21 Q Well, let's just -- you can do that, I think.</p> <p>22 16,000 in two months is 32,000. You add another</p> <p>23 16 to that, that's 48,000. You get a few weeks</p> <p>24 after that, you've got her paid off in less than</p> <p>25 four months; right?</p>

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<p>1 A If that was being considered, which it was not at 2 that time. 3 Q All right. So let's go to topic 9. So in 4 topic 9, we talked about, "The development, 5 implementation, and use of the fair market value 6 per share formula described in the May 7, 2007, 7 second amendment to shareholder agreement of 8 Windy Waters and any other formulas used with 9 respect to transactions involving Windy Waters' 10 stock." 11 Did I read that correctly? 12 A You did. 13 Q And you prepared to testify with respect to that 14 topic here today; right? 15 A I did. 16 Q And what specific documents did you review and who 17 did you speak with in order to prepare for this? 18 A I spoke to counsel, and present with counsel was 19 Reed and Mike. We reviewed the second amendment. 20 We reviewed the investment -- excuse me, the 21 valuation formula as part of that. 22 Q And I believe you said -- and you're aware of the 23 formula then that was used to redeem Stacy 24 Randall's shares on May 13 of 2020; right? 25 A I am.</p>	<p>1 stock? 2 A Based on the expert opinions of Virchow Krause 3 then and now Baker Tilly, the rough estimates of 4 fair market value were baked into the formula 5 itself. 6 Q So even -- so going up to the time of Stacy's 7 redemption in May of 2020, you would say that from 8 its inception to that time it always was designed 9 and actually did reflect a rough fair market 10 value? 11 A It's an approximation. 12 Q An approximation. Let me use your words. An 13 approximation of fair market value; correct? 14 MS. WITTENBERG: I'm going to 15 object just to the extent that it's calling 16 for an expert opinion on what the fair market 17 value actually was, but go ahead and answer. 18 MR. CAMELI: And I want to know his 19 understanding more than anything here. 20 A Yeah. Our understanding was it was a rough 21 approximation of what fair market value was. 22 Q And, again, that remained the same from its 23 inception up to the time that Stacy's shares were 24 redeemed in May of 2020? 25 A Based on the expert opinions of, yes, Baker Tilly</p>
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<p>1 Q And I think we spoke earlier about that being 2 created by Bruce Hutler some years prior to that; 3 correct? 4 A The Bruce Hutler report was the base for that 5 creation, and then additional experts at 6 Baker Tilly were involved to then come up with the 7 weighted EBITDA formula, and then attorneys at 8 that time got involved to put that in place. 9 Q Yeah. And that formula, it was based on 10 Mr. Hutler's appraisal; right? 11 A Mr. Hutler's appraisal was the base of that EBITDA 12 formula, yes. 13 Q Is it the company's position that the formula 14 gives the fair market value of Windy Waters' 15 stock? 16 A The formula when it was created was intended to 17 represent rough justice of a fair market value. 18 Q And was that the only time that it was ever meant 19 to give rough justice or approximate the fair 20 market value of Windy Waters' stock? 21 A The reason for the formula was to represent that 22 approximate -- the approximation of a fair market 23 value because the formula represented it as such. 24 Q And did it -- did that remain the case throughout 25 the duration of the formula as used to redeem</p>	<p>1 and their assembly of it, yes. 2 Q And when you say that, when you say the expert 3 opinions of Baker Tilly, what opinions are you 4 referring to? 5 A Their valuations that they created, the report 6 that we looked at prior. 7 Q Yeah. That would be -- you're referring to 8 Exhibit -- the one with the valuations and the 9 chart? 10 A 12. 11 Q 12, there we go. Pull out 12 for me. His 12. 12 Okay. It is our exhibit. I'm sorry. 13 So that's the valuations -- the valuation 14 that you're talking about? 15 A One of them. 16 Q One of them. And the others are where? 17 A 2017, 2018, 2019, and 2020. 18 Q And that is reflected in Exhibit 11? 19 A Correct. 20 Q Okay. Before the formula was created, what was 21 the procedure used to value shares for purchase or 22 redemption? 23 A I prepared to address the formula use and the date 24 ranges that were provided. I did not prepare -- 25 MS. WITTENBERG: And I was trying</p>

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<p style="text-align: right;">Page 129</p> <p>1 to give you some leeway here to see if there</p> <p>2 was some topic. I was scanning through the</p> <p>3 list myself at the moment, and I'm not seeing</p> <p>4 what topic this would fall under.</p> <p>5 Q So I think this kind of ties in to topic 10 about</p> <p>6 all stock transactions involving Windy Waters</p> <p>7 because some of those preceded the formula.</p> <p>8 So that's what I'm trying to ask about is</p> <p>9 before the formula, how was it all determined?</p> <p>10 Again, value for purchase, value for redemption.</p> <p>11 A I prepared at length on the formula for the dates</p> <p>12 that were specified. So I'm not prepared to</p> <p>13 answer that.</p> <p>14 Q Okay. All right. Was a formula mandated for</p> <p>15 voluntary redemptions?</p> <p>16 MS. WITTENBERG: I'll object to the</p> <p>17 extent that I think it calls for a legal</p> <p>18 conclusion, but go ahead and answer to the</p> <p>19 best of your ability.</p> <p>20 A The formula was used extensively for all</p> <p>21 transactions, with the exception of one, since</p> <p>22 2004, and it was adopted as the second amendment</p> <p>23 to the shareholder agreement in 2007. So its</p> <p>24 practice was extensive to use it. And was it</p> <p>25 mandated is your question then?</p>	<p style="text-align: right;">Page 131</p> <p>1 Baker Tilly formula that was organized in 2017 --</p> <p>2 Q Oh, so it's not --</p> <p>3 A -- and '18.</p> <p>4 Q Okay. So it's not -- and I apologize because my</p> <p>5 question is probably confused here.</p> <p>6 When I talk about the formula, I'm referring</p> <p>7 to the formula contained in the shareholder</p> <p>8 agreement.</p> <p>9 A Understood.</p> <p>10 Q And what I'm trying to figure out is whether the</p> <p>11 numbers, the valuation numbers on Exhibit 11 that</p> <p>12 appear on the bottom of the page, are derived from</p> <p>13 the shareholder agreement formula or not.</p> <p>14 A No.</p> <p>15 Q And instead they are derived from -- how would you</p> <p>16 finish that sentence?</p> <p>17 A I would --</p> <p>18 MS. WITTENBERG: Object to the</p> <p>19 extent that it calls for a legal conclusion</p> <p>20 to interpret an expert opinion, but go ahead</p> <p>21 and answer to the best you can.</p> <p>22 A These are provided because they were valuations of</p> <p>23 the organization consistent with the topic 6 that</p> <p>24 was requested, so they were formal valuations done</p> <p>25 by an expert, and they were using a formula that</p>
<p style="text-align: right;">Page 130</p> <p>1 Q Uh-huh.</p> <p>2 A And the answer to that was no.</p> <p>3 Q Why? Why was the formula not mandated for</p> <p>4 voluntary redemptions in the eyes of the company?</p> <p>5 A The way it was presented in the shareholder</p> <p>6 agreements would have stated it as such.</p> <p>7 Q Because it really -- and we'll talk about this</p> <p>8 more, because it really talked about redemption</p> <p>9 upon death or permanent and total disability;</p> <p>10 right?</p> <p>11 A It did.</p> <p>12 Q So -- looking at Exhibit 11 here and your summary</p> <p>13 of these estimated fair market value of</p> <p>14 Windy Waters shares as determined by Baker Tilly,</p> <p>15 you have the dates at the bottom here of page 11,</p> <p>16 '17, '18, '19, '20. Were those all done in</p> <p>17 accordance with the formula?</p> <p>18 A Those were all done as valuations of Windy Waters</p> <p>19 in the time periods requested, and they did</p> <p>20 include a formula.</p> <p>21 Q Include the formula.</p> <p>22 A They were -- they used a formula.</p> <p>23 Q That's what I'm getting at. So these numbers are</p> <p>24 the output from using the formula?</p> <p>25 A These numbers are the output from using a</p>	<p style="text-align: right;">Page 132</p> <p>1 was a combination of income-based and market-based</p> <p>2 calculations.</p> <p>3 Q So in your -- from your understanding as a company</p> <p>4 representative, it had nothing to do with the</p> <p>5 formula as contained in the shareholder agreement?</p> <p>6 A From my understanding, it's different than that</p> <p>7 formula.</p> <p>8 Q Okay. Got it. All right. So you said that the</p> <p>9 formula was not -- now we're, again, talking about</p> <p>10 the shareholder agreement formula, that it was not</p> <p>11 mandatory -- mandated for voluntary redemptions.</p> <p>12 Do you know why the formula was not mandated for</p> <p>13 voluntary redemptions?</p> <p>14 A The preparation for this did not include the why</p> <p>15 for that.</p> <p>16 Q Okay. So you don't know?</p> <p>17 A Correct.</p> <p>18 Q Okay. Have you ever heard that it was -- the</p> <p>19 formula was created as a courtesy to minority</p> <p>20 shareholders?</p> <p>21 A I'm not familiar with that language.</p> <p>22 Q Did minority shareholders have a right to compel</p> <p>23 the company to purchase their shares at the</p> <p>24 formula value?</p> <p>25 MS. WITTENBERG: Objection to the</p>

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<p>1 extent that it calls for a legal conclusion, 2 but go ahead. 3 A Please repeat that question. 4 MR. CAMELI: Sure. 5 (Question read) 6 A I think the minority shareholders historically 7 were transacting using that formula. Those were 8 the offers that were provided to minority 9 shareholders, based on that formula. 10 Q So let me just -- I'll repeat it one more time. 11 Did minority shareholders have a right to 12 compel the company to purchase their shares at the 13 formula value? 14 MS. WITTENBERG: Same objection. 15 A I don't believe they did. 16 (Exhibit No. 14 marked for 17 identification) 18 Q I'm going to provide you now what has been marked 19 as Exhibit 14. Would you identify this as -- it 20 appears to be the 1993 shareholder agreement for 21 Widen Colourgraphics, Limited; correct? 22 A I've got a 1992 date. 23 Q '92. Sorry about that. 24 I'm sorry. Did you say that this is the '92 25 shareholder agreement with Widen Colourgraphics?</p>	<p>1 question; correct? 2 A Correct. 3 Q So let's go to page 8 of this exhibit. So at the 4 bottom of page 8, there is a Section 2.1 titled 5 Redemption of Stock. Do you see that? 6 A I do. 7 Q And it's titled, if you move to the next page, to 8 2.2, that subsection is titled Death? Interesting 9 subtitle to have in a shareholder agreement. And 10 that talks about what is to occur with respect to 11 redeeming shares or purchasing shares upon the 12 death of an agreeing shareholder; correct? 13 A At a glance, I'm reviewing that and reading 14 sentences with you. 15 Q And you can just look at 2.2A is where I stated 16 that from. 17 A Yep. 18 Q Do you agree that that's what it says, that this 19 section deals with the redemption or purchase of 20 stock upon the death of an agreeing shareholder; 21 correct? 22 A I'd like to read it aloud just to make sure that 23 I'm processing it here. 24 Q Sure. 25 A "Upon the death of an agreeing shareholder,</p>
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<p>1 A This is a shareholder agreement of Widen 2 Colourgraphics, LTD, that is executed as of the 3 1st day of March, 1992. 4 Q And Widen Colourgraphics, Limited, preceded the 5 name Windy Waters; is that correct? 6 A Widen Colourgraphics would have preceded the same 7 Widen Enterprises. 8 Q Do you know why Windy Waters retained a copy of 9 this document in its records? 10 A Widen Enterprises would have retained a copy 11 consistent with its policies on document 12 retention. 13 Q I was just curious because I thought you said it 14 preceded as an entity Widen Enterprises, not 15 Windy Waters. So why would it -- why would 16 Windy Waters retain a copy of this document in its 17 records? 18 A Because Widen Enterprises -- Windy Waters owned 19 Widen Enterprises. 20 Q Did Windy Waters provide a copy of this document 21 to each of its shareholders? 22 A I did not prepare a topic -- on this topic to 23 determine if a shareholder agreement from 1992 was 24 provided to shareholders. 25 Q Okay. So you don't know the answer to that</p>	<p>1 deceased shareholder, the company and the 2 surviving shareholders shall redeem or purchase 3 and the personal representative of the deceased 4 shareholder shall sell all of the deceased 5 shareholder's redemption stock upon the terms 6 provided herein. The redemption shall be closed 7 at the time and place specified by the company 8 within 90 days after the determination of fair 9 market value pursuant to Section 3.2 hereof." 10 Q Okay. So the answer to my question is yes? 11 A Can you repeat the question? 12 MR. CAMELI: Sure. Why don't you 13 repeat the question. 14 (Question read) 15 A For this document, yes. Correct. 16 Q And if you go to 2.2B, it says that, "The deceased 17 shareholder's redemption stock shall be redeemed 18 at fair market value determined as set forth in 19 Section 3.2 hereof and upon the payment terms as 20 provided in Section 3.3 hereof." 21 Did I read that correctly? 22 A You did. 23 Q Okay. So then if we go to 3.2, 3.2 is entitled 24 Fair Market Value. We're on page 11. Do you see 25 that?</p>

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<p>1 A I do.</p> <p>2 Q And in the middle of page 11 there, it defines</p> <p>3 fair market value as, "A value an informed and</p> <p>4 willing buyer and seller agree upon for the sale</p> <p>5 and purchase of 100 percent of the issued and</p> <p>6 outstanding stock of the company without any</p> <p>7 discount for lack of liquidity, marketability, or</p> <p>8 minority status." Do you see that?</p> <p>9 A I do.</p> <p>10 Q So this was actually amended in 2007; isn't that</p> <p>11 correct?</p> <p>12 A I didn't prepare to address this topic with this</p> <p>13 agreement based on my understanding of what was</p> <p>14 provided.</p> <p>15 Q Okay. So let's walk through it, then. Let's go</p> <p>16 to the next exhibit.</p> <p>17 (Exhibit No. 15 marked for</p> <p>18 identification)</p> <p>19 Q So I'm showing you here what has been marked as</p> <p>20 Exhibit 15. And this is entitled Second Amendment</p> <p>21 to Shareholder Agreement Executed 7th day of May,</p> <p>22 2007; is that right?</p> <p>23 A That's correct.</p> <p>24 Q Okay. And Windy Waters retained a copy of this</p> <p>25 document in its records that is the original;</p>	<p>1 A This document was signed by Stacy Randall, and it</p> <p>2 is her signature.</p> <p>3 Q Okay. So you are familiar with her signature, and</p> <p>4 you're saying that is her signature based on your</p> <p>5 understanding of what her signature is?</p> <p>6 A I see Stacy Randall's signature line in two</p> <p>7 different places. One is Windy Waters and one as</p> <p>8 a shareholder. I see her signing this document,</p> <p>9 and I know that prior to signing any document she</p> <p>10 would have been provided the document. So she</p> <p>11 would have seen the document and signed the</p> <p>12 document.</p> <p>13 Q And I just want to make sure that we're clear on</p> <p>14 this. Do you believe that on page 2, which</p> <p>15 actually appears on Bates stamped Stafford 1292</p> <p>16 and 1293, because it looks as if these were signed</p> <p>17 in counterparts, you see that Stacy Randall is</p> <p>18 listed as a signatory on that; is that correct?</p> <p>19 A Correct.</p> <p>20 Q And you see a signature above the line that says</p> <p>21 by Stacy Widen-Randall; is that correct?</p> <p>22 A Correct.</p> <p>23 Q Okay. And is it your testimony that you know --</p> <p>24 you are familiar enough with her signature to say</p> <p>25 this is indeed, in your opinion, her signature.</p>
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<p>1 isn't that correct?</p> <p>2 A Of the second amendment?</p> <p>3 Q Yes.</p> <p>4 A That is a copy that I'm looking at right here,</p> <p>5 yes.</p> <p>6 Q Yes. But Windy Waters retained that in their</p> <p>7 records; is that correct?</p> <p>8 A Based on my understanding.</p> <p>9 Q So did Windy Waters provide a copy of this</p> <p>10 document to each of its shareholders?</p> <p>11 A This document would have been provided. It would</p> <p>12 have been consistent with the disclosure policies,</p> <p>13 and it would have been provided to those who would</p> <p>14 have had to sign it.</p> <p>15 Q Yeah. So what you're saying is it was the</p> <p>16 practice to have provided this to its</p> <p>17 shareholders; right?</p> <p>18 A I would say it was the -- it would be the</p> <p>19 adherence to the disclosure practice that we had,</p> <p>20 yes.</p> <p>21 Q Do you know if Windy Waters provided a copy of</p> <p>22 this document, Exhibit 15, to Stacy Randall?</p> <p>23 A This document was signed by Stacy Randall, and,</p> <p>24 therefore, would have been provided to her.</p> <p>25 Q Do you know if that's her signature?</p>	<p>1 Is that your testimony?</p> <p>2 A My testimony is that she was provided this</p> <p>3 document, and she signed it.</p> <p>4 Q All right. So you have personal knowledge of her</p> <p>5 actually being provided it and signing it?</p> <p>6 MS. WITTENBERG: I'm just going to</p> <p>7 object -- or clarify, he's the representative</p> <p>8 of Windy Waters. So on behalf of Windy</p> <p>9 Waters, you're asking him does Windy Waters</p> <p>10 know that she signed it?</p> <p>11 MR. CAMELI: I am asking that, yes.</p> <p>12 A Windy Waters provided this to Stacy for her</p> <p>13 signature, and she signed it.</p> <p>14 Q Okay. And now I'm going to ask that of you</p> <p>15 personally. Do you know, do you know if she was</p> <p>16 provided this document? Do you, Mr. Gonnering,</p> <p>17 know that she was provided this document and that</p> <p>18 she signed it?</p> <p>19 A So now I'm speaking as Matthew Gonnering?</p> <p>20 MS. WITTENBERG: Yeah. And this is</p> <p>21 questionable here because he's here today on</p> <p>22 behalf of Windy Waters, and he's been deposed</p> <p>23 for a full day's testimony here. So I don't</p> <p>24 think that's an appropriate question.</p> <p>25 It's an objection. It's just I don't --</p>

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<p>1 we've got to focus on him as the 2 representative today. 3 MR. CAMELI: Sure. So can he 4 answer the question? 5 MS. WITTENBERG: I think you've 6 used your time with him as an individual. 7 MR. CAMELI: Okay. So are you 8 telling him not to answer the question? 9 MS. WITTENBERG: I'm saying it's an 10 objection. I think that you have gone beyond 11 the scope. If you want to just preserve 12 this. 13 Again, we've objected to it as his 14 individual testimony. We wouldn't want you 15 to use it because you've expanded your seven 16 hours, but if you want to get an answer just 17 to avoid the possibility of having to come 18 back, I'm okay with that. 19 MR. CAMELI: Okay. Let's do that, 20 then. So my question is -- I'll have it read 21 back to you. 22 (Question read) 23 A I know based on conversations with others but not 24 directly did I see her receive this and/or see her 25 sign this.</p>	<p>1 I see the word "and," at least on my copy, is a 2 little fuzzy. Did I read that correctly? 3 A You did. 4 Q And then it goes on to spell out how 3.2 of the 5 shareholder agreement, Exhibit 14, was indeed 6 amended. Do you see that? 7 A I do. 8 Q And it says specifically, "Except as otherwise 9 provided, the price for each share of stock or 10 interest therein redeemed or purchased pursuant to 11 Sections 2.2 and 2.3 shall be equal to the fair 12 market value per share of stock as determined 13 pursuant to this Section 3.2." 14 Did I read that correctly? 15 A You did. 16 Q And when it refers to that shareholder agreement, 17 it's the 1992 shareholder agreement, Exhibit 14, 18 that we were just talking about; correct? 19 A Uh-huh. Yes. 20 Q So this really says, does it not, that the fair 21 market value per share as calculated pursuant to 22 3.2 equals the fair market value per share? 23 MS. WITTENBERG: Objection. Calls 24 for a legal conclusion, but go ahead and 25 answer.</p>
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<p>1 Q So now let's go back to your hat as a corporate 2 representative today and your view that on behalf 3 of the corporation that she did get it and that 4 she signed it. 5 My question to you is who did you speak with 6 and what did they say that led you to the 7 conclusion as a corporate representative to say 8 that she received it and that she signed it? 9 MS. WITTENBERG: I'll object 10 because this would have come within the scope 11 of attorney-client privilege. It was during 12 a privileged communication that this topic 13 was discussed. 14 So I guess to follow up with that, that 15 would be an instruction to not answer 16 specific conversations that were held 17 among -- in a privileged communication. If 18 you know outside of that, then go ahead and 19 give the answer. Does that instruction make 20 sense to you? 21 A Yes. On the advice of counsel, I won't answer. 22 Q All right. Looking at page 1 of Exhibit 15, after 23 the recitals, paragraph 1, it reads, "Section 3.2 24 of the shareholder agreement is hereby deleted and 25 the following language is inserted in its place."</p>	<p>1 A In reading it. That's how I read it, yes. 2 Q And do you think that statement is true? 3 A I would use the expert opinions from Virchow 4 Krause and Baker Tilly for determinations on 5 value. 6 Q Well, do you think that statement was true for 7 certain periods of time but not true for other 8 periods of time? 9 A What statement, again? 10 Q The statement that we just recited here. 11 A Which is that, "Except as otherwise provided, the 12 price for each share of stock or interest therein 13 redeemed or purchased pursuant to Sections 2.2 and 14 2.3 shall be equal to the fair market value per 15 share of stock as determined pursuant to this 16 Section 3.2 (fair market value)." 17 Q Yeah. 18 A And I think except as otherwise provided is what 19 I'm saying is the expert opinions of Baker Tilly 20 that were providing rough justice to fair market 21 value. 22 Q So you think that the Baker Tilly opinions are 23 what's being contemplated here, or is an example 24 of what is being contemplated by the except as 25 otherwise provided?</p>

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<p>1 MS. WITTENBERG: Objection. Calls 2 for a legal conclusion. 3 MR. CAMELI: I'm just asking his 4 understanding. 5 A That's my understanding. 6 Q Okay. So let's go to page 4 of this exhibit. 7 Do you see on page 4 that there is a fair market 8 value per share calculation listed there as 9 Exhibit C? 10 A I do. 11 Q And, in fact, that's the words that are used on 12 the exhibit itself, "Fair market value per share 13 calculation." Is that correct? 14 A It is. 15 Q And is this the formula, then, that was used to 16 redeem Stacy Randall's shares on May 13 of 2020? 17 A This is the weighted EBITDA formula that was 18 assembled by Baker Tilly and used to redeem 19 shareholders -- or used as the formula for 20 shareholders since 2004. So, yes, this was the 21 formula. 22 Q That, again, was based on the 2004 Bruce Hutler 23 report that provided, as I think you said earlier, 24 the foundation for that; correct? 25 A That's correct.</p>	<p>1 instead of the appraisal provision that was in 2 Section 3.2 originally; isn't that correct? 3 MS. WITTENBERG: Same objection. 4 A My understanding is that it was created -- well, 5 it was created by Baker Tilly based on the 6 previously disclosed methods and put in place for 7 this amendment. And used in practice prior to 8 this and subsequent to this. 9 MR. CAMELI: All right. So we're 10 going to pull you in a different direction 11 here with another exhibit. 12 MS. WITTENBERG: Would it be a good 13 time for a quick break? 14 MR. CAMELI: Absolutely, if that 15 works. 16 MS. WITTENBERG: I'm just saying it 17 would work well to do it now. 18 MS. EVANS: When is your call? 19 MS. WITTENBERG: I have a 3:30 20 call. I won't do that now, just the spacing 21 would work well to do it now and then at 22 3:30. 23 MR. CAMELI: All right. Good. 24 THE VIDEOGRAPHER: Going off the 25 record at 2:16.</p>
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<p>1 Q And when we talk about the stock price formula or 2 the formula more generally, this is what everyone 3 has been talking about in this litigation the 4 whole time; correct? 5 A I know that it's an active subject. 6 Q I'm sorry? 7 A I know that it's an active subject, yes. 8 Q Okay. So do you feel that it's fair to say as a 9 company representative here that this was amended 10 to substitute the stock price formula instead of 11 the appraisal provision that was in Section 3.2 12 originally? 13 MS. WITTENBERG: Objection. Calls 14 for a legal conclusion. But go ahead. 15 Q What's the company's understanding of that, 16 Mr. Gonnering? 17 A The company's understanding is that we sought 18 expertise from outside representatives on 19 valuation and assembled this formula to represent 20 that in the interests of representing what those 21 experts concluded. 22 Q And what I'm trying to get at here, Mr. Gonnering, 23 though, is this amendment, and if you can't answer 24 it, you can't answer it, but this amendment was 25 really meant to substitute the stock price formula</p>	<p>1 (Recess) 2 THE VIDEOGRAPHER: We're back on 3 the record at 2:31. 4 Q Mr. Gonnering, did you or someone else from the 5 company disclose to Stacy that the formula used to 6 redeem her shares on May 13 of 2020 was the same 7 formula intended to be used for death and 8 disability under the shareholder agreement? 9 A All the relevant information that Stacy would have 10 been provided would have been provided to her. I 11 don't know if that specific statement was provided 12 to her. 13 Q Let's move to topic 12. And I will again draw 14 your attention to Exhibit 1, Notice of Deposition, 15 and topic 12, it says, "The impact of the COVID-19 16 pandemic on Windy Waters." Did I read that 17 correctly? 18 A You did. 19 Q And are you prepared to testify about that? 20 A I am. 21 Q And what documents did you review to prepare for 22 testifying on behalf of Windy Waters about the 23 impact of COVID-19 on Windy Waters? 24 A I reviewed previous depositions, the transcripts 25 of those. I reviewed a confidential memo that was</p>

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<p style="text-align: right;">Page 149</p> <p>1 provided related to that. I reviewed financial 2 information in and around that time period, and 3 also spoke with counsel and present with counsel 4 was Reed and Mike. 5 Q You've talked before about reviewing depositions, 6 and I just want to make sure that I understand 7 whose depositions you reviewed. Can you run those 8 by me again? 9 A Those would be snippets of depositions that were 10 provided by Reed, Mike, or myself. 11 Q Mike Kiesler or yourself. So whenever you've 12 talked about reviewing depositions, are those the 13 three that you're talking about? 14 A Those are the three that I'm talking about. 15 Q Okay. No others? 16 A Correct. 17 Q Okay. Good. So give me kind of an overview of 18 the financial and economic impact of COVID-19 on 19 Windy Waters. 20 A Windy Waters had two main areas. One was the 21 operating entity that was Widen and the other that 22 was the investments. So Windy Waters' concern 23 was, and what would be best summarized as, 24 significant uncertainty in that time period. The 25 operating entity of Widen Enterprises was</p>	<p style="text-align: right;">Page 151</p> <p>1 We also experienced in March a net income of 2 almost negative \$700,000, which was significant. 3 So we had significant concerns, uncertainty, risk 4 in the business, and had to figure out how were we 5 going to survive. 6 Some steps were taken to cut expenses. We 7 looked at reducing expenses in areas that involved 8 nonlabor expenses, things like merit increases, 9 things like new hires, things like learning and 10 growth, or learning opportunities. We removed all 11 of those expenses. 12 We also had other scenarios that would have 13 reduced additional expenses. And we had plans up 14 to about 6 million in expense reductions on that. 15 We ended up taking action on about 3 million of 16 expense reductions. 17 We also had a business unit at that time that 18 was our pre-media business function, which we 19 really just stopped getting work. Customers would 20 no longer provide work. The business was 21 dependent on getting work, and we ended up exiting 22 that business as a result of changes in that time. 23 So those were some of the impacts. In 24 addition, the CEO took a wage cut at that time, 25 early in April of 2020 as a result of the</p>
<p style="text-align: right;">Page 150</p> <p>1 navigating significant risk related to COVID-19 2 for a variety of reasons. 3 One in particular, the contract terms that we 4 provided with customers allowed them to terminate 5 upon 30-day written notice. That was a 6 significant concern at that time, that customers 7 would exercise that right. 8 In addition to no longer being customers of 9 the organization, we would have also paid some of 10 those customers back because we were receiving 11 payments for services that were yet to be 12 provided, and so they would have been owed a 13 significant amount of money provided they left. 14 We also -- those were some economic impacts. 15 The impact was also significant on the workforce 16 as we figured out how to move from a physical work 17 environment to a remote work environment, and we 18 did that in March. 19 We reviewed economic uncertainty in the 20 business related to what we saw as growth changes. 21 We anticipated a certain amount of growth and were 22 no longer able to make those projections. So we 23 cut those growth expectations. And the quantity 24 of new customers that we were -- that we expected 25 to get, we changed that considerably.</p>	<p style="text-align: right;">Page 152</p> <p>1 anticipated expense reductions and also did not 2 plan for an increase that was slated and promised 3 later that year, and that was removed as well. So 4 those were some of the things that we navigated in 5 that time. 6 Q CEO of Windy Waters? 7 A Widen. Me. I took a 10 percent pay cut, and I 8 took my wages that were planned for increases 9 later that year off. 10 Q So does that pretty much cover the kinds of risks 11 that you were navigating at the time? Is there 12 anything else you want to talk about? 13 A Well, the risk of our future was significant, and 14 those are the risks that are top of mind for me. 15 I don't represent that to be comprehensive, but 16 those are -- 17 Q Some of the primary ones? 18 A Well, I could continue because there was real risk 19 to this point of differentiation that we used, 20 which was we provided to compete against other 21 larger players a 30-day out to these agreements, 22 and there was a real concern at that time that, 23 again, that would be exercised by these customers. 24 We also knew that there were certain 25 customers in industries that were more impacted</p>

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<p>1 than others at the time, so we looked at 2 hospitality and food service and travel and 3 tourism, and we had looked at those customers and 4 thought, well, we're going to have to assess our 5 risk on this front, as well, because these 6 customers are subject to not renewing or more 7 likely than others to leave sooner. So we had an 8 understanding of that.</p> <p>9 Yeah. And the employee impact was 10 significant here, too, which was how do we manage 11 a remote workforce because we had not done that at 12 scale before. We had a few remote employees that 13 could serve in that function, but to transition an 14 entire workforce, approximately 150 people, out of 15 a building and into a home where there are also 16 other things happening, kids going to school, all 17 their spouses working collectively, this was -- 18 these were things that we hadn't figured out 19 before, so we had to go through those.</p> <p>20 And we provided a great deal of understanding 21 to employees throughout that. We took great pride 22 in making sure that they tended to their families 23 but also that we are -- we still need -- we need 24 to do things here. We need to continue to serve 25 our customers because we are at great risk.</p>	<p>1 testimony that you just gave on the impact, that 2 narrative, were you referring to what was going on 3 in March of 2020 or was it a different protracted 4 period?</p> <p>5 Help me understand it in terms of timing. 6 Were these concerns you had in the early part of 7 the pandemic? Which we'll start with March, and 8 we're going to go through some months here 9 because, you know, we're going to lead up to the 10 redemption in May.</p> <p>11 So is what you testified to just now concerns 12 that had evolved in March only and then changed in 13 April or were they March, April, May? Tell me -- 14 give me a sense of that.</p> <p>15 A It started in March. Early March when we first 16 started to assess it, and I wouldn't lock it to 17 March. It continued because our assessments of 18 things continued.</p> <p>19 Q It was a rapidly evolving landscape; right?</p> <p>20 A Correct. Right. And we continued to meet as a 21 COVID team, so we organized a team to respond to 22 this and to help figure things out. So that team, 23 I believe, met until the spring/summer of 2021. 24 So we continued to navigate those challenges in 25 the business through that team up until around</p>
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<p>1 We also provided credits to customers who 2 asked for them, and when customers would threaten 3 to leave, we would say, well, can we help, and 4 they would leave because of the uncertainty. And 5 we said, well, all right, can we help. So we 6 provided a program that would help them to keep 7 them but also to do our best to retain them 8 despite the challenges that they were working 9 with, with increased risk then of, well, maybe 10 they just don't survive either, and we don't 11 survive as a result then because now we have 12 nonpayment for things that we've been providing 13 services to.</p> <p>14 So those were a few additions that came to 15 mind as I was thinking about this, which is a 16 horrible thing to continue to think about. This 17 was one of the most significant challenges that 18 I've ever dealt with as a business leader.</p> <p>19 Q I want to put all of this into a temporal context 20 now because COVID hit the American economy, if you 21 will, in, I believe, March of 2020; correct?</p> <p>22 A We started to organize in March of 2020 around 23 that, and generally I would say that's a date 24 that's used, March of 2020 as the impact, yes.</p> <p>25 Q So help me understand as you go over -- the</p>	<p>1 that point in time.</p> <p>2 Q And so now let's go into April. Same concerns? 3 Anything changing in April at all for you? Are 4 you starting to see a little more clarity about 5 the impact that this will have or not have on the 6 company in April?</p> <p>7 A I would say April's concerns were continued.</p> <p>8 Q So it was all the same in April of 2020 as it was 9 in March of 2020?</p> <p>10 A April also had the PPP loan at Widen Enterprises 11 applied to and received as part of the economic 12 uncertainty. So that was inserted into the 13 equation, and I believe that was in April. But 14 our April uncertainty was equal to, if not greater 15 than, the March uncertainty because it --</p> <p>16 Q So that's helpful. Or helpful to know.</p> <p>17 So now May, going into May, how, if at all, 18 are things changing for you in terms of your 19 outlook, in terms of, you know, what's in store 20 for the company and its future and its customer 21 relations? How, if at all, does that change in 22 May of 2020?</p> <p>23 A I think it continues. In May we would have had 24 visibility on -- we would have had final 25 visibility on March's financials, so that was --</p>

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<p>1 March's financials would have been made available</p> <p>2 in about mid-April, and so we would have been</p> <p>3 seeing the results of these activities financially</p> <p>4 speaking then but also living it in the moment</p> <p>5 with the customer responses. So I don't consider</p> <p>6 May any different.</p> <p>7 Q Than March or April?</p> <p>8 A In terms of uncertainty, massive.</p> <p>9 Q Well, how was it different other than uncertainty,</p> <p>10 if at all?</p> <p>11 A How was it different other than uncertainty? In</p> <p>12 May versus all the previous months?</p> <p>13 Q Yes, sir.</p> <p>14 A There was -- well, in about that time there was</p> <p>15 also the sunseting of our pre-media business</p> <p>16 unit, so there was actions that we were also</p> <p>17 trying to figure out there. So that was also</p> <p>18 indicative of this continued uncertainty.</p> <p>19 So relative, it's stuff to go back and think</p> <p>20 about it relative to those months. I would just</p> <p>21 say it continued.</p> <p>22 Q Would it have even gotten worse maybe in May?</p> <p>23 A Things were more known. Some of those things may</p> <p>24 have been -- well, like the financial statements,</p> <p>25 that some things were bad news, and we would have</p>	<p>1 received or applied for a Paycheck Protection</p> <p>2 Program loan?</p> <p>3 A The most significant uncertainty was in the</p> <p>4 operating entity of Widen, and that's where the</p> <p>5 terms of that certification were based on economic</p> <p>6 uncertainty, and that's where we had the</p> <p>7 significance of it.</p> <p>8 Q Well, there were no paychecks to start with in</p> <p>9 Windy Waters; right?</p> <p>10 A Correct.</p> <p>11 Q So it's hard to apply for a loan for the Paycheck</p> <p>12 Protection Program if there is no paychecks;</p> <p>13 right?</p> <p>14 A That would be --</p> <p>15 Q You agree?</p> <p>16 A Yeah.</p> <p>17 Q But obviously Widen Enterprises was different in</p> <p>18 that regard. It was, as you say, an operating</p> <p>19 entity; correct?</p> <p>20 A Correct.</p> <p>21 Q How much was the loan that Widen Enterprises</p> <p>22 received?</p> <p>23 A Approximately 2.6 million.</p> <p>24 Q Other than what you just testified to, at any</p> <p>25 point did COVID-19 threaten the viability of Widen</p>
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<p>1 come to know those things.</p> <p>2 Q Nothing --</p> <p>3 A There was a lagging.</p> <p>4 Q Yeah. So nothing -- nothing improving, nothing</p> <p>5 looking positive for you when it comes to May of</p> <p>6 2020 compared, again, to March and April?</p> <p>7 A Well, we were keeping a positive spirit of things</p> <p>8 to sustain what we were -- as a business. We were</p> <p>9 certainly adopting the spirit of positivity.</p> <p>10 Q Beyond the spirit of positivity, were there any</p> <p>11 other things that gave you a positive outlook in</p> <p>12 May that you didn't have in March or April?</p> <p>13 A I don't have anything that comes to mind</p> <p>14 specifically. I'm not saying that that wouldn't</p> <p>15 be the case, but I couldn't think of anything at</p> <p>16 the moment.</p> <p>17 Q Sure. Well, let's talk a little bit more, then,</p> <p>18 about the PPP, better known as the Paycheck</p> <p>19 Protection Program, that you referenced earlier;</p> <p>20 okay?</p> <p>21 A Yep.</p> <p>22 Q So did Windy Waters obtain a loan under the</p> <p>23 Paycheck Protection Program?</p> <p>24 A I understood the loan to be at Widen Enterprises.</p> <p>25 Q Do you know why Windy Waters would not have</p>	<p>1 Enterprises and then, in turn, Windy Waters?</p> <p>2 A It threatened the viability of Widen Enterprises,</p> <p>3 yes, and as a result of it being a significant</p> <p>4 asset for Windy Waters, that would have cascaded.</p> <p>5 Q It was then a threat to Windy Waters as a result;</p> <p>6 right?</p> <p>7 A Because the operating entity of Widen was a</p> <p>8 significant asset of Windy Waters, the threat of</p> <p>9 viability within Widen was also inherited by</p> <p>10 Windy Waters.</p> <p>11 Q Okay. So let's just take a look here at --</p> <p>12 So how many customers did Widen lose in March</p> <p>13 of 2020, if any?</p> <p>14 A I didn't prepare details related to new customer</p> <p>15 accounts based on the topics that were provided.</p> <p>16 Q Okay. So do you know if it lost any customers in</p> <p>17 March of 2020?</p> <p>18 A There were impacts to customers in March of 2020,</p> <p>19 evidenced by the activities of 2020. The churn</p> <p>20 revenue or entity was something, again, I did not</p> <p>21 prepare in accordance with the topics that were</p> <p>22 provided here. The detail there I did not</p> <p>23 memorize.</p> <p>24 Q Did you gain any customers in March of 2020?</p> <p>25 A Same response. Same response.</p>

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<p>1 Q Did any of the customers who you were concerned 2 with cancel? Did they cancel? 3 A I recall customers cancelling. I don't recall 4 the -- 5 Q How many? 6 A I don't recall the count based on -- yeah. Again, 7 based on the topics, I didn't get to that level of 8 detail, nor was I capable of memorizing some of 9 those things. 10 Q Once again, do you have any recollection at all 11 about what customers you actually gained in March 12 of 2020? 13 A I know that we've provided documentation for 14 certain things. If you want to point me to 15 something, I'm happy to look at it, but, again, I 16 did not memorize those things, nor did I prepare 17 with that level of specificity. 18 Q Well, I'm not asking you to quantify. I'm just 19 asking you to tell me whether you believe you 20 gained customers, increased your customer base -- 21 no. Excuse me. Whether you gained any new 22 customers in March of 2020. 23 A It's possible that we gained new customers. 24 Q Okay. And you believe that you lost some 25 customers as well?</p>	<p>1 do any in writing? 2 A Any risk assessments? 3 Q Uh-huh. Yes. 4 A I was forthcoming with the risk in updates that 5 were provided to Reed. 6 Q Did you prepare any memoranda on the subject of 7 risk assessments to the company in March, April, 8 and May of 2020? 9 A I prepared an internal memo to Reed related to the 10 COVID activities in response to the PPP loan. 11 Q And do you know if that was provided to the 12 plaintiff in this case? 13 A It was provided to counsel. 14 MR. CAMELI: Okay. Does counsel 15 know if it was provided? 16 MS. WITTENBERG: I believe so. 17 Q Did you search for, find, or know of any written 18 documentation of any threat posed to the company 19 as a result of COVID during the months of March, 20 April, and May of 2020? 21 A Did we search for anything related to COVID risks? 22 Q Search for or find any written documentation 23 related to COVID risks to the company during 24 March, April, and May of 2020? 25 A We would have searched risk related to certain</p>
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<p>1 A It's possible that we lost customers. 2 Q How about for April and May, are your answers the 3 same? 4 A It would be the same. It's possible that we 5 gained some. It's possible that we lost some. 6 I do recall the scenarios that we did speak 7 in to estimate that the new customer projections 8 were going to be greatly reduced, and so I do 9 recall projections that we made in April and May, 10 that we assumed that there would be no new and 11 that we would cut in half the amount of customers 12 that we expected to earn in the remainder of the 13 year. 14 Q And that happened in April? 15 A I don't recall when that would have happened. 16 Q Okay. It would have been in the early part of 17 COVID, March, April, May, somewhere in there? 18 A I would say because we were thinking about an 19 April and May new customer projection count being 20 reduced to nothing, then it would have to have 21 been in March or the first part of April. And 22 that -- yeah. 23 Q And did you do any risk assessments at all during 24 this time? I'm now talking about March, April, 25 May of 2020. You've testified to some. Did you</p>	<p>1 industries, which is where we would have assembled 2 lists of customers that were in greater jeopardy 3 than others. 4 Q Yeah, and I'm referring more now to -- I wasn't 5 clear on this. Referring to how you prepared for 6 your testimony here. Did you search for whether 7 there was any kind of written documentation going 8 to risk assessments during March, April, May of 9 2020? 10 A One of the things that I said in preparation is I 11 reviewed that memo, and that memo is the one that 12 I just referenced. 13 Q Got it. 14 A So I did, yes, review that. In addition to the 15 updates that were provided in and around that time 16 to Reed. 17 Q And were any of your -- how would you characterize 18 the impact of your Widen Enterprises assessments 19 on Windy Waters? Was it -- were those same 20 negative impacts going to affect Windy Waters? 21 A Because Widen was an asset of Windy Waters, then 22 Windy Waters would inherit that risk. 23 Q So really a threat to Widen was a threat to 24 Windy Waters; right? 25 A A threat to Widen was a threat to Windy.</p>

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<p>1 Q So I want you to look at something we're going to 2 mark as an exhibit here. 3 (Exhibit No. 16 marked for 4 identification) 5 Q And you have in front of you something marked as 6 Exhibit 16. And I want you to look at the very 7 first page, and it looks like it's from you, 8 Matthew Gonnering, to Reed Widen, and it copies 9 Michael Kiesler; is that correct? 10 A That's correct. 11 Q And this is dated May 8 of 2020; correct? 12 A Correct. 13 Q And that's five days before the redemption of 14 Stacy Randall's shares on May 13; correct? 15 A Correct. 16 Q Now, I want to the direct your attention to the 17 paragraph that starts, "Software revenue." Do you 18 see that there? 19 A I do. 20 Q And it says that currently, and I think it's 21 referring to software revenue, right, "Currently 22 software revenue is projected at \$27.44 million 23 and we'll likely reduce it by a few hundred 24 thousand due to increased churn --" 25 MS. EVANS: Churn.</p>	<p>1 existing customers; diversify our channels into 2 combinations of inbound, outbound, and 3 partnerships; and pursue other opportunity that we 4 currently are researching. An early projection 5 shows 2021 around \$31.5 million, an 18 percent 6 increase over 2020." 7 Did I read that correctly? 8 A You did. 9 Q Now, does that dollar amount refer to Widen's 10 software revenue? 11 A That 31.5 may include the pre-media business, in 12 addition to the software business. 13 Q And -- 14 A I am not clear -- sorry. Go ahead. 15 Q No, I'm sorry. I cut you off. You can finish. 16 A But I am not clear based on what I wrote here if 17 that would be inclusive of that. 18 Q And refresh my memory about what percentage the 19 pre-media would have been against the software at 20 this time in 2020. 21 A I don't have the percentage. I would think it was 22 around -- let me just see if I had an update about 23 that in here, and I did not. I would say 24 around -- this is difficult to say because I don't 25 know when we would have dialed back the</p>
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<p>1 Q "Churn," sorry, "from existing customers. We will 2 adjust more frequently, given the circumstances, 3 pulling in current data to estimate departures. 4 Software revenue growth in 2020 is about 5 10 percent better when compared to 2019." 6 So did I read that correctly? 7 A You did. 8 Q And those are your words back on May 8 of 2020; 9 correct? 10 A They are. 11 Q And you believed those numbers to be correct at 12 that time; right? 13 A At that time, yes. 14 Q And would these numbers have been based on 15 Windy Waters' accounting system? 16 A These numbers would have been based on the Widen 17 Enterprises entity. 18 Q So do you see a paragraph heading that says 2021 19 Planning? It's sort of near the bottom, second 20 from the last. Do you see that? 21 A I do. 22 Q Let me just read that with you. "In our last 23 executive session we set forth four areas of 24 investment in 2021 that we need to spend more time 25 with. Win in PIM, P-I-M; increase stickiness of</p>	<p>1 projections based on the work that stopped showing 2 up. So I'd like to guess at -- 3 Q Yeah, you can approximate this. I'm not going to 4 hold you to a precise percentage. But I'm 5 trying -- I'm just trying to recall, because I 6 know you've testified about this in the past, but 7 for the purposes of context here, I'm just trying 8 to determine what percentage you would have 9 attributed of that 31 million to pre-media based 10 on what was going on at the company at the time. 11 Is it 10 percent? 20 percent? You know, those 12 just kind of rough numbers. 13 A If it's in there, it would be, my guess is between 14 5 and 10 percent. 15 Q So at any point did the COVID-19 pandemic then 16 cause Windy Waters or Widen to incur a negative 17 revenue projection? 18 A A negative revenue projection? I would need to 19 look at the monthly revenue performance, which I 20 did not go into that level of specificity in 21 preparation for this topic. But that is where I 22 would go to see if that event occurred. 23 Q That's significant; right? When you think about a 24 negative revenue projection here, we're talking 25 about significant revenue, positive revenue</p>

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<p>1 projections and even significant growth.</p> <p>2 Don't you think you would have remembered if</p> <p>3 there were ever negative revenue projections if</p> <p>4 there ever were any? I'm not asking how many or</p> <p>5 how much. I'm just asking whether you ever had to</p> <p>6 incur a negative revenue projection?</p> <p>7 A I wasn't specifically looking for a negative</p> <p>8 revenue projection month over month, but that is</p> <p>9 where I would look.</p> <p>10 Q So is your testimony you can't really -- you don't</p> <p>11 know? You don't have a recollection as you sit</p> <p>12 here, and you don't know the answer to that</p> <p>13 without additional research?</p> <p>14 A My testimony is that I didn't prepare to that</p> <p>15 level of specificity to remember the level of</p> <p>16 detail regarding that.</p> <p>17 Q What about year-to-year revenue, negative revenue</p> <p>18 projection?</p> <p>19 A What you read represents an increase in '21. The</p> <p>20 2020 growth that was projected was 10 percent, and</p> <p>21 I would note these are reductions of previously</p> <p>22 expressed growth that the organization was built</p> <p>23 for. We were directed to grow. We were built for</p> <p>24 growth. And when the growth slowed, that is a</p> <p>25 significant event when you're built for growth.</p>	<p>1 was between 140 to 150 people.</p> <p>2 Q And were those positions -- you said that was --</p> <p>3 I'm sorry. You said that was June of 2020?</p> <p>4 A I think approximately summer. I don't know the --</p> <p>5 Q Okay. Summer of 2020. So sometime after this</p> <p>6 redemption with Stacy Randall?</p> <p>7 A Correct.</p> <p>8 Q And were those positions ever refilled?</p> <p>9 A The positions related to that were because of the</p> <p>10 exiting of the business that was pre-media.</p> <p>11 Q Yes.</p> <p>12 A And we chose to stop doing work in that based on</p> <p>13 work that no longer was being earned or coming to</p> <p>14 us.</p> <p>15 Q I see. I remember that, again, from your other</p> <p>16 testimony. So that was a result of just exiting a</p> <p>17 service or product line; correct?</p> <p>18 A Correct.</p> <p>19 Q Salary reductions, were there any salary</p> <p>20 reductions other than what you had mentioned as</p> <p>21 the CEO taking a 10 percent cut to your salary?</p> <p>22 A We would have reduced the future merit increases</p> <p>23 that were budgeted. But outside of my reduction,</p> <p>24 there were no other reductions to a wage in that</p> <p>25 moment.</p>
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<p>1 Q Sure. So as high as these were, you're saying</p> <p>2 that previously they were even higher?</p> <p>3 A These are reductions in growth based on where they</p> <p>4 were before.</p> <p>5 Q So where were they before? Where were they, do</p> <p>6 you remember?</p> <p>7 A I could look at previous documents that have been</p> <p>8 provided to give you that level of specificity if</p> <p>9 you would like that.</p> <p>10 Q Yeah. Do you have those available to you to look</p> <p>11 at right now or no?</p> <p>12 A I didn't prepare that level of specificity based</p> <p>13 on this topic, but I know we provided those, and</p> <p>14 I'm happy to look at it if you would like to go</p> <p>15 through it.</p> <p>16 Q Okay. I think we covered the issue of lost</p> <p>17 customers. And did you actually engage in any</p> <p>18 layoffs at Windy Waters or Widen Enterprises?</p> <p>19 A Widen Enterprises conducted a layoff.</p> <p>20 Q And when did it do it and of how many people?</p> <p>21 A There would be documentation related to that. I</p> <p>22 would say it was approximately the summer of 2020</p> <p>23 and approximately 16 people.</p> <p>24 Q Which represented what percent of your workforce?</p> <p>25 A I would say our approximate workforce at that time</p>	<p>1 Q When did you recover that 10 percent reduction?</p> <p>2 When were you no longer taking it?</p> <p>3 A I don't recall.</p> <p>4 Q Do you recall approximately how many months you</p> <p>5 were subjected to that 10 percent reduction?</p> <p>6 A I didn't prepare the details related to my wage</p> <p>7 recovery. That's the extent of my understanding</p> <p>8 of the topic.</p> <p>9 Q I want to talk about this PPP loan again. Did you</p> <p>10 ever return it to the government?</p> <p>11 A We did not.</p> <p>12 Q So it was kept, and it was, you said,</p> <p>13 approximately 2.6 million?</p> <p>14 A Yes.</p> <p>15 Q All right. It looks like we're heading to</p> <p>16 topic 13. I'll ask you to pull up Exhibit 1</p> <p>17 again, the notice, and you would agree that that</p> <p>18 identifies as a topic, "Windy Waters' cash</p> <p>19 reserves and investments from 2015 through 2020."</p> <p>20 Correct?</p> <p>21 Did I read that correctly?</p> <p>22 A You did.</p> <p>23 Q Are you prepared to testify on that?</p> <p>24 A I am.</p> <p>25 Q And, again, can you tell us what documents you</p>

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<p>1 reviewed to prepare for testifying?</p> <p>2 A I reviewed financial information for Windy Waters</p> <p>3 and the investment accounts and in conversation</p> <p>4 with counsel, also spoke to Mike and Reed.</p> <p>5 Q In May of 2020, what was the amount that</p> <p>6 Windy Waters had in cash?</p> <p>7 A In preparation for this topic, I wasn't expected</p> <p>8 to recall specific dollar amounts for areas of the</p> <p>9 financial statements, and so I -- if you've got</p> <p>10 financial information in front of you, I'm happy</p> <p>11 to look at that.</p> <p>12 Q So the topic was Windy Waters' cash reserves and</p> <p>13 investments from 2015 through 2020. You didn't</p> <p>14 do, like, a summary or anything of that sort of</p> <p>15 what those were like month to month or month over</p> <p>16 month?</p> <p>17 A I did not come prepared to talk about the cash</p> <p>18 reserves that are investments without the</p> <p>19 specificity of individual numbers that changed</p> <p>20 over time.</p> <p>21 Q Maybe Mr. Kiesler's deposition could be helpful.</p> <p>22 I'm going to give you Mr. Kiesler's deposition.</p> <p>23 We'll mark that as an exhibit and see if that can</p> <p>24 help refresh your memory. Okay?</p> <p>25 A Thank you.</p>	<p>1 Q Yeah. And if you actually go to page 177,</p> <p>2 page 45. We're at line 14.</p> <p>3 A What number? I'm sorry.</p> <p>4 MS. EVANS: It's on page 45 of the</p> <p>5 whole deposition transcript.</p> <p>6 THE WITNESS: Okay. And what block</p> <p>7 are we in?</p> <p>8 MS. EVANS: 177.</p> <p>9 THE WITNESS: 177. Okay. Thank</p> <p>10 you.</p> <p>11 Q And, again, just to put a finer point on this,</p> <p>12 if you read it from line 14:</p> <p>13 "Q. You aren't aware that at that time</p> <p>14 Windy Waters had \$5.5 million invested in the</p> <p>15 money market?</p> <p>16 "A. Which included PPP. Well --</p> <p>17 "Q. 2.7?</p> <p>18 "A. -- cash equivalents, yes.</p> <p>19 "Q. So if we deduct the 2.7 million PPP loan</p> <p>20 from the 5.5 million that you had on hand, there</p> <p>21 is still ample money --"</p> <p>22 Did I read that correctly?</p> <p>23 A Yeah. You read the question directed to Mike</p> <p>24 correctly, yes.</p> <p>25 Q Yeah. And I think he was agreeing that that was a</p>
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<p>1 (Exhibit No. 17 marked for</p> <p>2 identification)</p> <p>3 Q I'm showing you what's been marked as Exhibit</p> <p>4 No. 17. I'm going to ask you to go to page 294,</p> <p>5 and let's start -- and it's on page 74. Let's</p> <p>6 start with line 6, and I'll just -- maybe you can</p> <p>7 read along with me here.</p> <p>8 "Q. Earlier today, we talked about the</p> <p>9 funds in Windy Waters as of May 2020, and</p> <p>10 specifically, we talked about Windy Waters having</p> <p>11 about \$5.5 million of cash or cash equivalents on</p> <p>12 hand. Do you recall, generally speaking, our</p> <p>13 conversation about that?</p> <p>14 "A. Generally.</p> <p>15 "Q. When, if ever, were Windy Waters funds</p> <p>16 used to pay the expenses of Widen Enterprises?</p> <p>17 "A. Again, it was a consolidated parent."</p> <p>18 Is that refreshing your recollection at all</p> <p>19 about what was in Windy Waters' accounts back in</p> <p>20 May of 2020?</p> <p>21 A Generally, yes.</p> <p>22 Q And does that seem like that's about what was in</p> <p>23 the accounts back then?</p> <p>24 A I will echo Mike's statement here. Generally,</p> <p>25 yes.</p>	<p>1 correct -- those were correct numbers. But more</p> <p>2 importantly, I'm just, again, trying to help you</p> <p>3 with remembering what was on hand at about that</p> <p>4 time. And you agree that that's roughly what it</p> <p>5 was, taking into account that PPP loan; right?</p> <p>6 A Yeah. The way Mike -- yeah, I agree with Mike's</p> <p>7 general statement here when asked about having</p> <p>8 5.5 million.</p> <p>9 Q And the loan was never repaid; right? They</p> <p>10 ultimately got a waiver on that?</p> <p>11 A We applied for forgiveness in accordance with</p> <p>12 the terms of that agreement.</p> <p>13 Q And you were granted that?</p> <p>14 A And we were granted that, yes.</p> <p>15 Q Very good. Why don't you take a look now at the</p> <p>16 declaration of Mr. Kiesler.</p> <p>17 MR. CAMELI: It was previously</p> <p>18 marked; right? I don't believe -- was it</p> <p>19 previously marked?</p> <p>20 MS. WITTENBERG: Exhibit 7.</p> <p>21 Q Exhibit 7. We talked earlier about that, and I</p> <p>22 would like you to go to page 13, paragraph 95.</p> <p>23 And Mr. Kiesler says in paragraph 95, let me</p> <p>24 read that, "In May of 2020, neither Widen</p> <p>25 Enterprises nor Windy Waters could spare \$50,000</p>

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<p>1 from its cash reserves for anything other than 2 operating expenses." 3 Did I read that correct? 4 A You did. 5 Q And do you agree with Mr. Kiesler's statement in 6 his declaration in that regard? 7 A I do. 8 Q And how did Windy Waters determine what it could 9 spare? 10 A Windy Waters looked at the investments as a source 11 to cover the operating entity's potential 12 downturns with three months of expenses 13 approximately. And so approximately we could say 14 that Widen Enterprises was -- I'm going to insert 15 some numbers here, but we could go to the 16 specifics of these numbers, but approximately 17 Widen Enterprises was spending \$2 million per 18 month, and with having three months on the ready 19 in the event of a significant downturn, especially 20 based on the uncertainty here, Widen -- 21 Windy Waters would not have had enough to meet the 22 criteria that was set forth for that condition. 23 Q But a determination was made that there was enough 24 to pay Ms. Randall \$16,000 and some change per 25 month for a protracted period. That it could do;</p>	<p>1 MS. WITTENBERG: Sorry to 2 interrupt. 3 MR. CAMELI: It's a good time for a 4 break. 5 MS. WITTENBERG: It's 2:27. Great. 6 MR. CAMELI: It's a good time. 7 We'll go off the record. 8 THE VIDEOGRAPHER: Off the record 9 at 3:27. 10 (Recess) 11 THE VIDEOGRAPHER: We're back on 12 the record at 4:00. 13 MR. CAMELI: Thank you. Just a 14 quick statement on the record. We're going 15 to try and wrap this up today in about 16 45 minutes, 45 or 50 minutes, and reserve 17 approximately an hour of deposition time to 18 address or potentially address productions 19 that were made last night and two days ago, 20 and we don't know where we'll land on that 21 without first getting through those. 22 But I just want counsel to know that 23 we're doing that, and I believe you have 24 something you would like to say as well. 25 MS. WITTENBERG: Understood. Yes.</p>
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<p>1 correct? 2 A In that moment that determination was made, yes. 3 Q And did anyone offer to her the option of taking 4 \$10,000 over 5 months or the \$16,000 over 5 3 1/2 months to get her to the 50,000 that I 6 understand you're saying could not be made 7 outright at that time? 8 A I don't recall what options were provided to 9 Ms. Randall in that moment. 10 Q Who would know if such options were provided? 11 And, again, I'm asking you here as the company 12 rep. If you as a company don't know, who would 13 know if those options were provided? 14 A Ms. Randall would have come to Reed, and then Reed 15 would have directed to Mike this conversation. 16 And to our knowledge, it was her asking for 17 things, and we said no to the 50,000. 18 Q As you sit here with me today, though, you would 19 agree that that was obviously something that the 20 company could have done is paid her \$50,000 over a 21 three to four-month period; correct? 22 A Given the uncertainty and the condition of having 23 three months of operating expenses on the ready, 24 that answer is no. 25 MR. CAMELI: Okay.</p>	<p>1 And we would reserve the right to object to 2 that, but we're certainly willing to work 3 with you to see if we can reach some sort of 4 an agreement on that front. 5 MR. CAMELI: Great. Thank you. 6 Q All right. So let's jump over to a document that 7 we are marking now as Exhibit 18. 8 (Exhibit No. 18 marked for 9 identification) 10 Q Mr. Gonnering, we're showing you what's been 11 marked as Exhibit 18. I believe this is entitled 12 ITR Economics EVP FLEX, Widen - Total, and it's 13 dated December 20 of -- excuse me, December of 14 2020. Do you have that in front of you? 15 A I do. 16 Q If you go to the first page after that, it says 17 Widen - Total Outlook; is that correct? 18 A It does. 19 Q And what I would like you to do is go five pages 20 in, and it looks like these are not Bates stamped, 21 but there is a chart, and I'm looking at -- you 22 have it open right now, and it says Widen - Total, 23 Data Trends, Millions of \$. 24 And you have that in front of you; correct? 25 A I do.</p>

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<p>1 Q And it shows quarterly -- in the right column it</p> <p>2 says Quarterly Revenue, Annual Revenue, and then</p> <p>3 Outlook. Do you see that?</p> <p>4 A I do.</p> <p>5 Q What is this document?</p> <p>6 A This document is a document produced by ITR</p> <p>7 Economics, which is an economics firm that we</p> <p>8 contracted to look at our historical revenue to</p> <p>9 determine what leading indicators they might find</p> <p>10 that are macroeconomic in nature, such that they</p> <p>11 could indicate future revenue.</p> <p>12 Q And the chart on page 5 that we were just talking</p> <p>13 about here depicts revenue growth of the company</p> <p>14 from 2005 to 2023 projected; is that right?</p> <p>15 A 2005 to -- what was your end date?</p> <p>16 Q 2023.</p> <p>17 A I have a 2024 date on this, which I don't know</p> <p>18 that -- it looks like it has a line.</p> <p>19 Q Yeah. It looks like it might be maybe the end of</p> <p>20 '23. I'm not sure if it quite touches '24.</p> <p>21 A Sure. It goes to September of '23 at the table on</p> <p>22 the bottom.</p> <p>23 Q And would you agree that this shows significant</p> <p>24 growth and projections from 2005 to 2023?</p> <p>25 A I would agree that this shows growth.</p>	<p>1 chart that we are looking at here, that</p> <p>2 Windy Waters was worth substantially more in 2020</p> <p>3 than it was in 2004. If you disagree with that,</p> <p>4 tell me you disagree with that.</p> <p>5 MS. WITTENBERG: Again, objection.</p> <p>6 Calls for expert opinion. But go ahead and</p> <p>7 answer if you can.</p> <p>8 A Windy Waters was worth what the consultants from</p> <p>9 Virchow Krause and Baker Tilly said it was worth</p> <p>10 based on their expert opinion, and this is revenue</p> <p>11 representation of Widen.</p> <p>12 Q So why don't you tell me in your own words what</p> <p>13 you believe this chart depicts about Widen</p> <p>14 Enterprises and its fiscal health in 2004 versus</p> <p>15 that of 2020.</p> <p>16 A From 2004 to 2020, this is one component of fiscal</p> <p>17 health. And so this would be only revenue and</p> <p>18 would not be indicative of fiscal health. It does</p> <p>19 represent revenue growth.</p> <p>20 Q Right. Because at the end of the day, expenses</p> <p>21 can easily exceed revenue and, therefore, you're</p> <p>22 not very healthy at all; correct?</p> <p>23 A Correct.</p> <p>24 Q But based on revenue growth alone, what would you</p> <p>25 say this chart depicts?</p>
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<p>1 Q And you would agree, based on the chart, that</p> <p>2 Windy Waters was worth substantially more in 2020</p> <p>3 than it was in 2004, for example?</p> <p>4 MS. WITTENBERG: Objection. Calls</p> <p>5 for expert opinion.</p> <p>6 Q Let me -- I'm just asking you to base it on what</p> <p>7 the chart reflects.</p> <p>8 A And so you're asking -- can you repeat that again,</p> <p>9 please?</p> <p>10 Q Sure. Would you agree that based on this chart</p> <p>11 that Windy Waters was worth substantially more in</p> <p>12 2020 than it was in 2004?</p> <p>13 MS. WITTENBERG: Same objection.</p> <p>14 A The worth of Windy Waters was determined through</p> <p>15 consultation with Virchow Krause/Baker Tilly. So</p> <p>16 that's --</p> <p>17 Q Yeah. So you hired -- I mean, the company,</p> <p>18 Windy Waters, hired this ITR Economics to do this;</p> <p>19 right?</p> <p>20 A Widen Enterprises.</p> <p>21 Q Oh, Widen Enterprises did. Excuse me. Widen</p> <p>22 Enterprises hired ITR to put together Exhibit 18;</p> <p>23 right?</p> <p>24 A Correct.</p> <p>25 Q Okay. And all I'm asking you is, based on the</p>	<p>1 A Growth in revenue.</p> <p>2 Q And do you think it depicts anything else with</p> <p>3 respect to the value of the company in 2004 versus</p> <p>4 2020?</p> <p>5 A Windy Waters' value is based on the expert</p> <p>6 opinions of Virchow Krause and Baker Tilly and</p> <p>7 what they created and advised on, and this is</p> <p>8 representative of Widen revenue.</p> <p>9 Q So your answer is it is not -- this chart does not</p> <p>10 reflect, in your view, the worth of Windy Waters</p> <p>11 comparatively between 2004 and 2020?</p> <p>12 A My testimony is that the chart represents revenue</p> <p>13 growth over the time period specified here and</p> <p>14 that Windy Waters' value is from the previously</p> <p>15 disclosed expert Virchow Krause/Baker Tilly</p> <p>16 activities.</p> <p>17 Q Okay. Let's go to topic number 11. I'll take you</p> <p>18 over to Exhibit 1 and note that topic 11 calls for</p> <p>19 testimony regarding the payment of dividends</p> <p>20 and/or distributions, including with respect to</p> <p>21 the pass-through or other tax obligations of any</p> <p>22 shareholders, from 2004 through 2008 and 2014</p> <p>23 through 2020.</p> <p>24 Did I read that correctly?</p> <p>25 A Yes.</p>

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<p>1 Q And you're prepared to testify on that today; 2 is that correct? 3 A That is correct. 4 Q And what did you do to prepare for your testimony 5 in that regard? 6 A I spoke with counsel, and present with counsel was 7 Reed and Mike, and we collectively reviewed those 8 dividends and/or distributions during those time 9 periods from the records that we held. 10 Q Was Stacy Randall paid as a president of 11 Windy Waters? 12 A She was paid as a director, not as a president. 13 Q And how much was she paid? 14 A She was paid \$5,000 annually. 15 Q During the entirety of her presidency? 16 A She was not paid as a president. She would have 17 been paid as a director. For the times that she 18 was a director, she would have been paid \$5,000 19 annually. 20 Q And that didn't change at all when she was also 21 president? 22 A Correct. 23 Q It was always 5,000? 24 A Correct. 25 Q Okay. Did Windy Waters ever make dividend</p>	<p>1 made, those payments? 2 A It does. 3 Q And I see the word distribution here. Tell me how 4 you differentiate, if at all, the word 5 distribution from dividend. 6 A We used distribution in the memo in our 7 documentation and did not differentiate with 8 dividends. It was used as our terminology. 9 Q Do you differentiate between a dividend and 10 compensation in Exhibit 19? 11 A We don't have any compensation listed here. 12 Compensation is different than a distribution. 13 Q Okay. So I'm still unclear about how you -- the 14 meaning -- the difference in meaning between the 15 word distribution and the word dividend as you use 16 it in Exhibit 19. 17 A We didn't contemplate the use of the word dividend 18 or distribution. We used distribution as the 19 word, and that's what was captured in the memos 20 and the records that we held. 21 Q What do you understand the word dividend to mean? 22 A A payment to a shareholder pro rata. 23 Q And do any of the distributions here identify a 24 payment to a shareholder pro rata? 25 A Yes. Can I correct one thing here?</p>
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<p>1 payments to its shareholders? 2 A Yes. 3 Q When did it do that? 4 A In preparation for this, we assembled some notes 5 that I would like to reference. 6 Q That would be perfect. Let's call that 7 Exhibit 19. 8 (Exhibit No. 19 marked for 9 identification) 10 Q Do you have that in front of you? 11 A Not yet. 12 Q And Exhibit 19 purports to be the notes that you 13 and others put together in anticipation of your 14 testimony here today with respect to topic 11; 15 correct? 16 A Correct. 17 Q So going back to my question, when, then, did 18 Windy Waters make dividend payments to its 19 shareholders? 20 A Windy Waters made dividend payments to its 21 shareholders or distributions for tax reasons and 22 when it was determined that a distribution should 23 be paid for nontax reasons. 24 Q And does Exhibit 19 set forth what the amounts 25 were and the approximate times when those were</p>	<p>1 Q Of course. 2 A A payment to a shareholder or on behalf of a 3 shareholder. 4 Q Pro rata. 5 A Pro rata. 6 Q Okay. And so these payments characterized as 7 distributions do include payments to a shareholder 8 or on behalf of a shareholder pro rata? 9 A Correct. 10 Q Where, if at all, or how, how can I determine 11 whether -- using the definition of a dividend, 12 whether a distribution or any payment in 13 Exhibit 19 is a dividend or not? 14 MS. WITTENBERG: I'll object to the 15 extent that it calls for a legal conclusion 16 as to the definition of dividend, but go 17 ahead and answer to the extent that you can. 18 A What's provided in Exhibit 19 is representative of 19 pro rata distributions to shareholders or on 20 behalf of shareholders. 21 Q So let me just review the first sentence there at 22 the top of -- or below the header line. It says, 23 "The below chart shows all dividends and/or 24 distributions during the requested time periods." 25 Did I read that correctly?</p>

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<p>1 A You did.</p> <p>2 Q So are you saying that these payments, all of</p> <p>3 these payments in Exhibit 19, do represent</p> <p>4 payments to a shareholder or on behalf of a</p> <p>5 shareholder pro rata?</p> <p>6 A Yes.</p> <p>7 Q And I noticed that some of these are made out to</p> <p>8 the U.S. Treasury and some are made out to the</p> <p>9 Department of Revenue. Why is that?</p> <p>10 A Those are payments on behalf of the shareholders</p> <p>11 for tax, federal or state.</p> <p>12 Q And did you always pay taxing authorities directly</p> <p>13 or did you ever pay the individual shareholders to</p> <p>14 cover their tax liability?</p> <p>15 A We usually paid the taxing authority, and there</p> <p>16 was a known event where we paid the individual</p> <p>17 based on their request. And I'm attempting to</p> <p>18 locate that one now.</p> <p>19 That would have been on January the 15th,</p> <p>20 2008. We received a request from Stacy Randall</p> <p>21 to pay her directly instead of to the taxing</p> <p>22 authority, in this case the United States Treasury.</p> <p>23 Q And then was there a tax liability incurred by the</p> <p>24 payee or on behalf of the -- excuse me.</p> <p>25 Was there a tax liability incurred by the</p>	<p>1 matter.</p> <p>2 Q Got it. So if I want the answer to that question,</p> <p>3 I've got to talk to them as far as whether there</p> <p>4 was such a liability imposed or not because of</p> <p>5 this distribution for tax purposes?</p> <p>6 A That would be the next place to go.</p> <p>7 Q Okay. The last question I have on Exhibit 19 is</p> <p>8 from where was this document made? What original</p> <p>9 source did you consult in order to put this chart</p> <p>10 together?</p> <p>11 A This was from our records that we held at</p> <p>12 Windy Waters.</p> <p>13 Q Okay. Mr. Kiesler testified that -- in a</p> <p>14 declaration that in 2016 Stacy Randall received</p> <p>15 dividend payments from the companies totaling in</p> <p>16 excess of \$156,000, including a nontax dividend</p> <p>17 payment in April of 2016.</p> <p>18 Does that appear to be consistent with the</p> <p>19 chart that you put together here as Exhibit 19?</p> <p>20 A I just flipped to 2016. I see a distribution here</p> <p>21 to Stacy Randall directly and on her behalf to the</p> <p>22 United States Treasury. Can you restate the</p> <p>23 numbers that you were citing there?</p> <p>24 Q Yeah. He believes in his declaration that she</p> <p>25 received dividend payments from the companies</p>
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<p>1 shareholder when such payments were made on their</p> <p>2 behalf to either of these taxing authorities?</p> <p>3 MS. WITTENBERG: Objection. I</p> <p>4 think that comes outside the scope of the</p> <p>5 topics and is a lack of foundation that</p> <p>6 Windy Waters would know that. If you think</p> <p>7 you can answer on behalf of Windy Waters,</p> <p>8 feel free to.</p> <p>9 A Windy Waters used Baker Tilly to generate these</p> <p>10 and provide these to the taxing authorities.</p> <p>11 Q So if there were a tax liability, that would have</p> <p>12 been something that was Baker Tilly's</p> <p>13 responsibility to determine and issue appropriate</p> <p>14 tax-related documents to the shareholder; is that</p> <p>15 right?</p> <p>16 A Windy Waters would have used Baker Tilly for</p> <p>17 tax-related matters, and so -- and these payments</p> <p>18 to these taxing authorities would have been to</p> <p>19 cover for their tax liability.</p> <p>20 Q Yeah. And I'm just trying to figure out from you,</p> <p>21 though, whether -- who made the determination as</p> <p>22 to whether there was a tax liability incurred by</p> <p>23 virtue of these distributions made for taxes on</p> <p>24 behalf of the shareholders?</p> <p>25 A We would have consulted with Baker Tilly on that</p>	<p>1 totaling in excess of \$156,000, including a nontax</p> <p>2 dividend payment in April of 2016. And I'm simply</p> <p>3 asking if you believe that this accurately</p> <p>4 represents that.</p> <p>5 A And that number was over 150?</p> <p>6 Q Yes, sir.</p> <p>7 A So I see two distributions to Stacy or on behalf</p> <p>8 of Stacy, one for \$126,018 on 4/7/16, and then I</p> <p>9 see on her behalf to the United States Treasury</p> <p>10 for 30,170. So I do see amounts in excess of 150</p> <p>11 to Stacy or on Stacy's behalf.</p> <p>12 Q Okay. And, again, we would characterize those as</p> <p>13 dividends as he did or something else? Earlier we</p> <p>14 were talking about distributions and the</p> <p>15 difference between those and dividends. How would</p> <p>16 you -- is his characterization correct in your</p> <p>17 view?</p> <p>18 MS. WITTENBERG: And, again, I'll</p> <p>19 just object to the extent that it calls for a</p> <p>20 legal conclusion as to the meaning of</p> <p>21 dividend, but go ahead and answer to the best</p> <p>22 of your ability.</p> <p>23 A Our records have the use of the word distribution,</p> <p>24 and I would say that the definition of</p> <p>25 distribution and dividend by our application of it</p>

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<p>1 is the same.</p> <p>2 Q Good. Let's go to 15, topic 15, and pull out the</p> <p>3 Notice of Deposition that's Exhibit 1. That calls</p> <p>4 for, "Solicitation to purchase or sell</p> <p>5 Windy Waters or any of its assets or subsidiaries</p> <p>6 from 2015 through 2021."</p> <p>7 Do you see that? Did I read that correctly?</p> <p>8 A You did.</p> <p>9 Q And you are prepared to testify on that topic?</p> <p>10 A I am.</p> <p>11 Q And what did you do to prepare?</p> <p>12 A I reviewed the emails that were received that were</p> <p>13 part of email accounts and also conversations with</p> <p>14 counsel and present with counsel, Mike and Reed.</p> <p>15 Q So do you know someone named Jeff Horein over at</p> <p>16 Baker Tilly?</p> <p>17 A I do.</p> <p>18 Q So in August of 2020, do you recall having</p> <p>19 correspondence with him regarding the fact that</p> <p>20 you were engaged -- currently engaged in a</p> <p>21 dialogue with a publicly held company who recently</p> <p>22 expressed interest because of your -- and I</p> <p>23 presume interest of purchasing Widen because of</p> <p>24 our market position and products and services. Do</p> <p>25 you recall that occurring and you sending</p>	<p>1 MR. CAMELI: Okay. And does</p> <p>2 counsel believe they were provided to us?</p> <p>3 MS. WITTENBERG: I believe so.</p> <p>4 MR. CAMELI: Okay.</p> <p>5 Q All right. What do you recall substantively about</p> <p>6 those communications, at least the ones that you</p> <p>7 can remember?</p> <p>8 A We would have received inquiry from Channel</p> <p>9 Advisor from a person named Derek Conlin, I</p> <p>10 believe was his last name.</p> <p>11 Q C-o-n-l-o-n?</p> <p>12 A C-o-n-l-i-n.</p> <p>13 Q Okay.</p> <p>14 A And he would have been in a capacity at Channel</p> <p>15 Advisor to make outreaches to organizations of</p> <p>16 interest and --</p> <p>17 Q Target companies for them to acquire?</p> <p>18 A Or partner.</p> <p>19 Q Okay.</p> <p>20 A Or align. So not necessarily to acquire or to</p> <p>21 partner or form some kind of alliance or technical</p> <p>22 partnership. So the nature of it was not -- it</p> <p>23 was partnership related.</p> <p>24 And then I would have forwarded that to our</p> <p>25 partner team, as I would with those types of</p>
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<p>1 something like that in August of 2020?</p> <p>2 A I do.</p> <p>3 Q What public company was that?</p> <p>4 A Channel Advisor.</p> <p>5 Q Channel, C-h-a-n-n-e-l. And what is their line of</p> <p>6 business?</p> <p>7 A They're a software company.</p> <p>8 Q And what was -- tell us, what can you recall about</p> <p>9 those discussions?</p> <p>10 A My discussion with Jeff was related to the</p> <p>11 succession planning primarily and simultaneous</p> <p>12 with that there was this inquiry from Channel</p> <p>13 Advisor, and I was asking Jeff about what to do</p> <p>14 related to this and how I might prepare.</p> <p>15 Q Did you ask him that before you responded to them?</p> <p>16 A I don't recall the sequence of events.</p> <p>17 Q Do you recall your interactions with Channel?</p> <p>18 A I recall some interactions with Channel.</p> <p>19 Q Were they written or oral or both?</p> <p>20 A Mostly written. Email dialogue.</p> <p>21 Q Okay. And do you believe that we were provided,</p> <p>22 the plaintiff was provided that correspondence</p> <p>23 related to those?</p> <p>24 A I believe you were -- they were provided to</p> <p>25 counsel.</p>	<p>1 inquiries, to explore what a partnership with</p> <p>2 Channel Advisor might look like. And then I would</p> <p>3 not have followed up with Derek.</p> <p>4 I would have received then an inquiry from</p> <p>5 the CEO of Channel Advisor in and around the</p> <p>6 August 2020 timeframe and following up with</p> <p>7 interest in having a conversation, and I would</p> <p>8 have -- I replied with a, "Let's have a talk"</p> <p>9 then. So I had a conversation with the CEO of</p> <p>10 Channel Advisor.</p> <p>11 Q So was there ever a discussion with them about</p> <p>12 their interest in purchasing or partnering with</p> <p>13 the company with respect to financial terms</p> <p>14 associated with that?</p> <p>15 A I don't recall any documents that were received in</p> <p>16 relation to financial terms related to any</p> <p>17 partnership with Channel Advisor.</p> <p>18 Q How about discussions or any other communications</p> <p>19 regarding potential financial considerations of a</p> <p>20 partnership, an acquisition, things of that sort?</p> <p>21 Do you have a recollection of any of that?</p> <p>22 A We provided financial information to Channel</p> <p>23 Advisor. I don't believe we reviewed any</p> <p>24 agreements with Channel Advisor related to the</p> <p>25 partnership.</p>

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<p>1 Q No letters of intent ever given to you?</p> <p>2 A No. No.</p> <p>3 Q Were there other solicitations between 2015 and</p> <p>4 May of 2020 that Widen received, Widen Enterprises</p> <p>5 received to purchase or sell Widen Enterprises or</p> <p>6 Windy Waters?</p> <p>7 A We received marketing emails or cold calls from a</p> <p>8 variety of parties in that timeframe.</p> <p>9 Q Did anyone during 2015 to May of 2020 ever discuss</p> <p>10 with you or in written correspondence communicate</p> <p>11 with you what they believed the value of Widen</p> <p>12 Enterprises or Windy Waters to be?</p> <p>13 A Not that I recall.</p> <p>14 Q Let's move to topic 16. I'm just going to ask one</p> <p>15 question on topic 16. Besides the sale of Widen</p> <p>16 Enterprises to Acquia, did Windy Waters ever</p> <p>17 engage in negotiations for a potential merger with</p> <p>18 any other company?</p> <p>19 A As part of the process we went through with</p> <p>20 Software Equity Group, in 2021 we would have</p> <p>21 received indications of interest and letters of</p> <p>22 intent from other organizations. We did receive</p> <p>23 indications of interest and letters of intent from</p> <p>24 other organizations.</p> <p>25 Q And were those written letters of intent provided</p>	<p>1 Q Okay.</p> <p>2 A And we would have received -- we did receive also</p> <p>3 an indication of interest from a private equity</p> <p>4 company called Marlin and their portfolio company</p> <p>5 called Aprimo, and that would have been in the</p> <p>6 same range as the Vista/Acquia one that I</p> <p>7 previously had shared, but I don't recall the</p> <p>8 exact number at this moment sitting here. Those</p> <p>9 were a few of the indications of interest that</p> <p>10 were provided.</p> <p>11 In addition, there were indications of</p> <p>12 interest that were provided through conversations</p> <p>13 that those parties, parties being the parties</p> <p>14 interested in Widen and/or Windy Waters, to SEG,</p> <p>15 Software Equity Group, that were not written but</p> <p>16 were below \$100 million, and those companies were</p> <p>17 not progressed through the process.</p> <p>18 Q This all occurs in the summer of 2021?</p> <p>19 A Correct.</p> <p>20 Q Did anything like that occur with any company</p> <p>21 prior to the summer of 2021?</p> <p>22 A It did not.</p> <p>23 Q Okay. We're going to move to topic 17. So this</p> <p>24 concerns, "Services performed by and information</p> <p>25 provided to and from Baker Tilly and Grant</p>
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<p>1 to us or to the plaintiffs in discovery?</p> <p>2 A They were provided to counsel.</p> <p>3 MR. CAMELI: Okay. Does counsel</p> <p>4 know if those were provided to us?</p> <p>5 MS. WITTENBERG: I believe so.</p> <p>6 Q And do you recall whether any financial terms were</p> <p>7 ever shared with respect to any of those companies</p> <p>8 interests in Widen Enterprises or Windy Waters?</p> <p>9 A Those indications of interest and letters of</p> <p>10 intent would have expressed some terms, yes.</p> <p>11 Q And do you recall what any of those dollar amounts</p> <p>12 would have been that were expressed by way of</p> <p>13 interest in Widen Enterprises or Windy Waters?</p> <p>14 A I do.</p> <p>15 Q And what were they?</p> <p>16 A In the summer of 2021, we received an indication</p> <p>17 of interest from a company called Syndigo for</p> <p>18 105 million. We received an indication of</p> <p>19 interest from Vista, the private equity company,</p> <p>20 in combination with their portfolio company,</p> <p>21 Acquia, and the first indication from them would</p> <p>22 have been a range, and I believe that range to be</p> <p>23 100 to 125 million.</p> <p>24 Q What timeframe?</p> <p>25 A The summer of 2021.</p>	<p>1 Thornton LLP, from 2015 through 2021 regarding</p> <p>2 consulting or due diligence for potential or</p> <p>3 planned mergers and acquisitions, succession</p> <p>4 planning, and planned or completed stock</p> <p>5 transactions."</p> <p>6 Did I read that correctly?</p> <p>7 A You did.</p> <p>8 Q And you prepared to testify in that regard?</p> <p>9 A I am.</p> <p>10 Q Did Windy Waters ever retain an outside accounting</p> <p>11 service?</p> <p>12 A Windy Waters used Baker Tilly for accounting</p> <p>13 services.</p> <p>14 Q And that is where, again, Bruce Hutler worked;</p> <p>15 correct?</p> <p>16 A For Virchow Krause prior to Baker Tilly, correct.</p> <p>17 Q Who at Widen Enterprises or Windy Waters gave</p> <p>18 information to Grant Thornton in connection with</p> <p>19 consulting or due diligence on potential or</p> <p>20 planned mergers and acquisitions or succession</p> <p>21 planning?</p> <p>22 MS. WITTENBERG: Object to the</p> <p>23 scope of this topic being outside the scope</p> <p>24 of the Windy Waters topic specifically and</p> <p>25 also assumes facts not in evidence.</p>

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<p>1 Q Okay. Let's start with Windy Waters. Who at</p> <p>2 Windy Waters gave information to Grant Thornton</p> <p>3 with respect to the noticed topic 17?</p> <p>4 MS. WITTENBERG: I'm handing him</p> <p>5 the notes that he had on this topic in case</p> <p>6 he needs them, and I'll hand you a copy as</p> <p>7 well.</p> <p>8 (Exhibit No. 20 marked for</p> <p>9 identification)</p> <p>10 Q So you have in front of you Exhibit 20; is that</p> <p>11 correct?</p> <p>12 A That is correct.</p> <p>13 Q And that purports to be your notes with respect to</p> <p>14 information contained in topic 17?</p> <p>15 A It is.</p> <p>16 Q So can you answer the question with respect to who</p> <p>17 at Windy Waters provided information to</p> <p>18 Baker Tilly and Grant Thornton with respect to the</p> <p>19 matters identified in topic 17?</p> <p>20 A Windy Waters did not engage in a relationship with</p> <p>21 Grant Thornton. Widen Enterprises did.</p> <p>22 Q So there was never any information provided to</p> <p>23 Baker Tilly by Windy or Grant Thornton regarding</p> <p>24 the subject of noticed topic 17?</p> <p>25 A We were talking about Grant Thornton before.</p>	<p>1 realize that was a designated topic from</p> <p>2 previous testimony, is that right, Counsel?</p> <p>3 MS. WITTENBERG: Correct.</p> <p>4 Q Was there a quality of earnings report made in</p> <p>5 connection with the sale of Widen -- of Windy</p> <p>6 Waters to Acquia or, excuse me, of Widen</p> <p>7 Enterprises to Acquia?</p> <p>8 MS. WITTENBERG: Again, this goes</p> <p>9 outside the topic as to Windy Waters</p> <p>10 specifically, but if you want to give that</p> <p>11 answer, go ahead.</p> <p>12 A Widen Enterprises contracted Grant Thornton to run</p> <p>13 a quality of earnings report in connection with</p> <p>14 the merger and acquisition process.</p> <p>15 Q And did you ever look at that report?</p> <p>16 A I did.</p> <p>17 Q And did it appear accurate to you?</p> <p>18 A It did.</p> <p>19 Q And who -- Did Mr. Kiesler interface with Grant</p> <p>20 Thornton on that?</p> <p>21 MS. WITTENBERG: Again, this is a</p> <p>22 topic for, I think, Widen Enterprises, and</p> <p>23 the topic is, in fact, noticed for Widen</p> <p>24 Enterprises, and that is the entity that</p> <p>25 engaged Grant Thornton.</p>
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<p>1 Windy Waters didn't engage with Grant Thornton,</p> <p>2 Widen did. Windy Waters would provide Baker Tilly</p> <p>3 with information, and the person at Windy Waters</p> <p>4 who would provide Baker Tilly information was Mike</p> <p>5 Kiesler.</p> <p>6 Q And, again, I'm talking with respect to consulting</p> <p>7 or due diligence for potential of planned mergers,</p> <p>8 an acquisition, succession planning, and planned</p> <p>9 or completed stock transactions.</p> <p>10 A Understood.</p> <p>11 Q Okay. So that would have been Mr. Kiesler in his</p> <p>12 capacity -- he would have been providing</p> <p>13 information on that topic to Baker Tilly?</p> <p>14 A Baker Tilly in the capacity of the mergers and</p> <p>15 acquisitions topic would have supported</p> <p>16 tax-related matters in June of 2021. So that is</p> <p>17 when they would have engaged on that topic.</p> <p>18 Q And as to Grant Thornton, your testimony is</p> <p>19 Windy Waters would have had no engagement with</p> <p>20 them for the topic noticed in 17?</p> <p>21 A Correct.</p> <p>22 MR. CAMELI: Okay. Do you know --</p> <p>23 So I'm looking now under the Windy Waters</p> <p>24 notice topic 20, and it talks about the sale</p> <p>25 of Widen Enterprises to Acquia. And I</p>	<p>1 So this witness has not prepared for the</p> <p>2 Widen Enterprises aspect of that topic. So</p> <p>3 I'm going to ask him not to answer right now,</p> <p>4 but he'll be back on Monday to answer for</p> <p>5 Widen Enterprises.</p> <p>6 MR. CAMELI: And that would be the</p> <p>7 same, Counsel, with respect to who at Widen</p> <p>8 Enterprises was interfacing with Grant</p> <p>9 Thornton?</p> <p>10 MS. WITTENBERG: Correct.</p> <p>11 MR. CAMELI: And who Grant Thornton</p> <p>12 was interfacing with at Widen Enterprises?</p> <p>13 MS. WITTENBERG: Correct.</p> <p>14 MR. CAMELI: Okay. Let's go off</p> <p>15 the record just for a minute.</p> <p>16 THE VIDEOGRAPHER: Going off the</p> <p>17 record at 4:44.</p> <p>18 (Recess)</p> <p>19 THE VIDEOGRAPHER: We're back on</p> <p>20 the record at 4:52.</p> <p>21 Q Mr. Gonnering, I would now like to move to</p> <p>22 topic 7, and that refers to, "Policies regarding</p> <p>23 disclosures to shareholders, directors, and</p> <p>24 officers and all disclosures made to shareholders,</p> <p>25 directors, and officers from 2004 through 2020."</p>

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<p>1 Is that correct?</p> <p>2 A That is correct.</p> <p>3 Q And you prepared to testify on this topic?</p> <p>4 A I am.</p> <p>5 Q How, if at all, did you organize disclosures made</p> <p>6 to the shareholders, directors, and officers from</p> <p>7 2004 through 2020?</p> <p>8 A How did we organize the disclosures to --</p> <p>9 Q I'm sorry. No. In preparing for this testimony,</p> <p>10 how did you personally, on behalf of the company,</p> <p>11 organize this information? So if I ask you</p> <p>12 questions about it, did you create a summary</p> <p>13 chart? What did you do?</p> <p>14 A I spoke to counsel, and present in the room was</p> <p>15 Reed and Mike, and we collectively organized the</p> <p>16 things that have been disclosed and provided a</p> <p>17 summary of those disclosures.</p> <p>18 Q Okay.</p> <p>19 A Assembled a summary of those disclosures.</p> <p>20 Q Got it. Something similar to what you had used</p> <p>21 previously in some of your other topic testimony?</p> <p>22 A Similar in the format of notes, are you referring?</p> <p>23 Q Yes.</p> <p>24 A Yes.</p> <p>25 Q Okay. So I'm going to ask about those</p>	<p>1 Q And the company believes that Stacy Randall was</p> <p>2 kept informed of company business, Windy Waters</p> <p>3 business, by Reed Widen and Michael Kiesler about</p> <p>4 any action requiring her approval as president or</p> <p>5 director or shareholder; is that correct?</p> <p>6 A That is correct.</p> <p>7 Q And the company believes that Reed Widen or</p> <p>8 Mr. Kiesler disclosed to Ms. Randall basic</p> <p>9 information about each transaction that required</p> <p>10 her approval?</p> <p>11 A That's correct.</p> <p>12 Q And one example of her being provided information</p> <p>13 she requested occurred in June of 2016 when her</p> <p>14 then husband asked on her behalf for a profit and</p> <p>15 loss statement for Windy Waters for three months;</p> <p>16 is that correct?</p> <p>17 A That is correct.</p> <p>18 Q And that same day Mr. Kiesler sent Mr. Randall</p> <p>19 copies of Windy Waters financial statements for</p> <p>20 January through April of 2016?</p> <p>21 A Sent him and Stacy together those copies.</p> <p>22 Q Very good. And then you provide another example</p> <p>23 of Ms. Randall, or is it Mr. Randall, in March of</p> <p>24 2020 asking Reed Widen?</p> <p>25 A Stacy.</p>
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<p>1 disclosures. I don't know if you want to provide</p> <p>2 that at this point.</p> <p>3 (Exhibit No. 21 marked for</p> <p>4 identification)</p> <p>5 Q So you have in front of you Exhibit 21, and this</p> <p>6 purports to be your notes to help recollect your</p> <p>7 testimony as it concerns topic 7; is that correct?</p> <p>8 A Correct.</p> <p>9 Q All right. And do you adopt this Exhibit 21 as</p> <p>10 your testimony with respect to topic 7?</p> <p>11 A I will use Exhibit 21 to testify to topic 7.</p> <p>12 Q So Windy Waters did not have any formal policies</p> <p>13 about disclosures to shareholders, directors, or</p> <p>14 officers; is that correct?</p> <p>15 A That is correct.</p> <p>16 Q And the shareholders were sent K-1s each year by</p> <p>17 either Baker Tilly or Mr. Kiesler?</p> <p>18 A Correct.</p> <p>19 Q Shareholders, directors, officers were provided</p> <p>20 with information when they requested it, but Windy</p> <p>21 Waters has no records of any specific formal</p> <p>22 disclosures made to all Class B shareholders or to</p> <p>23 all Class A shareholders or to all directors or</p> <p>24 all officers; is that correct?</p> <p>25 A That is correct.</p>	<p>1 Q Okay. So Stacy Randall in March of 20 asks Reed</p> <p>2 Widen and Mr. Kiesler for detailed financial</p> <p>3 information and accountant statements and</p> <p>4 requested that that information be provided to her</p> <p>5 lawyer; is that correct?</p> <p>6 A That is correct.</p> <p>7 Q And Mr. Kiesler gathered that and provided it to</p> <p>8 her counsel as requested?</p> <p>9 A That's correct.</p> <p>10 Q And Ms. Randall came into the office of Windy</p> <p>11 Waters and Widen Enterprises on occasion, and you</p> <p>12 believe, or the company believes that she was</p> <p>13 likely provided information during those visits</p> <p>14 but no such record of whatever information was</p> <p>15 disclosed is available?</p> <p>16 A That's correct.</p> <p>17 Q Have all the disclosures made to directors,</p> <p>18 officers, and shareholders been produced in this</p> <p>19 litigation that you know of?</p> <p>20 MS. WITTENBERG: Objection. Vague.</p> <p>21 Go ahead and answer if you can.</p> <p>22 A Disclosures that --</p> <p>23 Q To directors, officers, and shareholders, have all</p> <p>24 of those been produced in this litigation?</p> <p>25 A We have produced the substantive ones to counsel</p>

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<p style="text-align: right;">Page 209</p> <p>1 that are related to this matter.</p> <p>2 Q And were disclosures ever made in writing?</p> <p>3 A The K-1 disclosures would be made with written</p> <p>4 communications.</p> <p>5 Q And was information ever transmitted -- other than</p> <p>6 as outlined in the testimony we just went over,</p> <p>7 was any information ever provided by email or</p> <p>8 U.S. mail?</p> <p>9 A Information would have been provided by email, as</p> <p>10 I stated, with some of the K-1s. So that would</p> <p>11 have occurred. And by email for the requests for</p> <p>12 the profit and loss statement, the first example</p> <p>13 that was provided. And the second example, that</p> <p>14 was provided also as email activity.</p> <p>15 Q So with respect to the policies about disclosures</p> <p>16 to shareholder, you mentioned -- and directors and</p> <p>17 officers, you mentioned there is no formal policy.</p> <p>18 Were there informal policies?</p> <p>19 A Yes.</p> <p>20 Q And how were those documented?</p> <p>21 A They were not documented. By way of being</p> <p>22 informal, it was to provide information upon</p> <p>23 request.</p> <p>24 Q That was essentially the policy then. You got</p> <p>25 information if you asked for it?</p>	<p style="text-align: right;">Page 211</p> <p>1 A That's the title, yes.</p> <p>2 Q And then that is signed by Mr. Kiesler, and there</p> <p>3 is a waiver signed by Reed Widen and Stacy Randall</p> <p>4 that are attached to Exhibit 22; correct?</p> <p>5 A Correct.</p> <p>6 Q And that is -- if we look at the waiver for a</p> <p>7 moment, that is Stacy Randall's stamp; is that</p> <p>8 correct?</p> <p>9 A By looking at this document, I do not know what is</p> <p>10 a stamp and what is not a stamp.</p> <p>11 Q Do you believe that she -- that either her consent</p> <p>12 to use her stamp was used for this waiver or that</p> <p>13 she actually signed it?</p> <p>14 A Every time there was an action requiring her</p> <p>15 signature, she was made aware, and then she would</p> <p>16 direct accordingly.</p> <p>17 Q Was she ever notified of a waiver of any and all</p> <p>18 notice of the time and place of a shareholder</p> <p>19 meeting?</p> <p>20 A She was notified of documents that required her</p> <p>21 action, and this required her action, and,</p> <p>22 therefore, she would have been notified.</p> <p>23 Q And how do you believe she was notified?</p> <p>24 A She was communicated to by Reed or Mike.</p> <p>25 Q Orally or in writing or both?</p>
<p style="text-align: right;">Page 210</p> <p>1 A Correct.</p> <p>2 Q Okay. Now, did you ever provide board books to</p> <p>3 directors of Windy Waters for board meetings?</p> <p>4 A Corporate records, did we provide --</p> <p>5 Q No. Board books, meaning books that are assembled</p> <p>6 pertaining to company business, such as their</p> <p>7 financials.</p> <p>8 Did you ever provide anything that resembled</p> <p>9 that to directors of Windy Waters in conjunction</p> <p>10 with any board meetings that would have been held?</p> <p>11 A Not to my recollection.</p> <p>12 Q In fact, there weren't any board meetings ever</p> <p>13 held; correct?</p> <p>14 A There were no -- there were meeting minutes and no</p> <p>15 meetings, correct.</p> <p>16 Q Yeah. But there were meeting minutes, but there</p> <p>17 were no meetings?</p> <p>18 A Correct.</p> <p>19 Q And if I -- I want to show you one exhibit. This</p> <p>20 will be 22.</p> <p>21 (Exhibit No. 22 marked for</p> <p>22 identification)</p> <p>23 Q Exhibit 22, would you agree it purports to be</p> <p>24 minutes of a 2019 annual meeting of shareholders</p> <p>25 of Windy Waters; is that correct?</p>	<p style="text-align: right;">Page 212</p> <p>1 A The recollection of the method is not known.</p> <p>2 Q And there are a series of similar minutes of</p> <p>3 annual shareholder meetings that go from 2004</p> <p>4 through 2019 as evidenced here in Exhibit 22. You</p> <p>5 would agree that none of those shareholder meeting</p> <p>6 minutes reflect an actual meeting that took place?</p> <p>7 A There were no meetings that took place.</p> <p>8 MR. CAMELI: Okay. Subject to the</p> <p>9 reservation of time that we have placed on</p> <p>10 the record and our intended use thereof and</p> <p>11 counsel's reservation of objections to the</p> <p>12 same, we have no further questions, and we're</p> <p>13 ready to go off the record.</p> <p>14 THE VIDEOGRAPHER: Going off the</p> <p>15 record at 5:05.</p> <p>16 (Adjourning at 5:05 p.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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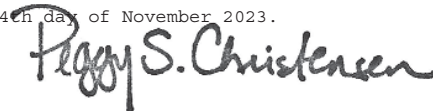
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1 STATE OF WISCONSIN)
) ss.
2 COUNTY OF DANE)
3

4 I, Peggy S. Christensen, Registered Professional
5 Reporter and Notary Public in and for the State of
6 Wisconsin, do hereby certify that the foregoing video
7 deposition of MATTHEW R. GONNERING, as the Corporate
8 Representative of Windy Waters, Inc., was taken
9 before me on November 3, 2023, and reduced to writing
10 by me, a professional court reporter and
11 disinterested person, approved by all parties in
12 interest and thereafter converted to typewriting
13 using computer-aided transcription.

14 I further certify that I am not related to nor
15 an employee of counsel or any of the parties to the
16 action, nor am I in any way financially interested in
17 the outcome of this case.

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 and affixed my notarial seal of office at Madison,
20 Wisconsin, this 4th day of November 2023.

21 
22
23

24 Notary Public, State of Wisconsin
25 My Commission Expires August 7, 2024

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